

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEBRASKA

3 MICHAEL S. ARGENYI,)
4 Plaintiff,) 8:09CV341
5 vs.) Omaha, Nebraska
6 CREIGHTON UNIVERSITY,) August 23, 2013
7 Defendant.)

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10 VOLUME III
11 TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE LAURIE SMITH CAMP
13 CHIEF UNITED STATES DISTRICT JUDGE AND A JURY
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Proceedings recorded by mechanical stenography, transcript
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A-P-P-E-A-R-A-N-C-E-S

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1 (At 9:03 a.m. on August 23, 2013, with counsel for the
2 parties, the plaintiff, and the defendant's representative
3 present, and the jury NOT present, the following proceedings
4 were had:)

5 THE COURT: Good morning.

6 MS. VARGAS: Good morning.

7 MR. MOORE: Good morning, Judge.

8 THE COURT: Is there anything we need to visit about
9 before Ms. Roundtree brings in the jury?

10 MS. VARGAS: Yes, your Honor. There are two issues I
11 just wanted to do seek clarification from the Court on.

12 The first is with respect to Mr. Argenyi testifying. We
13 are going to be calling him first to testify this morning.
14 And we're mindful of the Court's instruction with respect to
15 his use of CART during his testimony.

16 Our concern is if there's a technical problem -- we
17 understand the server was having issues in the courthouse
18 yesterday. And if his feed freezes, what would you suggest
19 would be an appropriate way to handle that situation?

20 THE COURT: And this raises a number of good
21 questions.

22 Before we bring in the jury, I would suggest that we let
23 Mr. Argenyi up on the stand, have the laptop set up so that he
24 can read it and also see the person who is asking him
25 questions.

1 If, for some reason, he is unable to read a question, for
2 example, sometimes a word doesn't immediately translate,
3 exactly as we would hear it, on the real time screen. And so
4 if he has any questions or confusion based upon the real time
5 feed, I would suggest that rather than drawing attention to
6 the real time feed, that he simply ask the attorney to repeat
7 the question. And chances are, it will come through
8 accurately the next time.

9 If there's a complete breakdown in the real time feed,
10 then I would suggest that he ask for a break in the
11 proceedings.

12 MS. VARGAS: My concern is that prejudices his
13 testimony. It suggests he's unable to continue answering if
14 for some reason he's responsible for it. And I certainly
15 don't want that impression to prejudice the plaintiff's case.

16 THE COURT: Well, do you have a different suggestion?

17 MS. VARGAS: My suggestion is that he be permitted to
18 testify as to the truth, that if the feed were to stop for
19 some reason, for him to be able to say that. I wouldn't want
20 to be in a position of telling him how to testify.

21 THE COURT: All right. I don't think that the feed
22 is likely to stop. And if the feed stops, he can turn to me
23 and say the feed has stopped.

24 MS. VARGAS: Thank you, your Honor.

25 THE COURT: All right.

1 Anything else?

2 MS. VARGAS: I did have one other question. I wanted
3 to clarify the Court's order with respect to proceedings that
4 have preceded this trial.

5 My understanding is that neither side is permitted to
6 mention those kinds of pretrial events, things such as the
7 TRO, for example -- the TRO hearing.

8 THE COURT: All right. I did issue an order in
9 response to the defendant's motion in limine indicating that
10 the plaintiff was not to refer to pretrial matters without
11 getting leave of Court to do so.

12 And then the plaintiff asked that that be reciprocal.
13 And that appeared to be fair, and I ordered that that was to
14 be reciprocal.

15 As far as testimony of the plaintiff or others in
16 connection with a different hearing, if someone has given
17 testimony under oath that is inconsistent with testimony that
18 is given on the stand, there may be impeachment of the
19 witness's testimony.

20 And so you're asking me to anticipate that this may
21 happen, and I don't know if you are considering that to be
22 objectionable.

23 MS. VARGAS: My concern is that neither party be
24 permitted to say the prior testimony was at a TRO hearing.

25 THE COURT: All right. I don't know why either party

1 would need to refer to it as a TRO hearing. But the party
2 attempting to impeach the testimony of a witness could make
3 reference to prior testimony offered under oath at an earlier
4 proceeding, just as we've heard done in connection with
5 depositions.

6 MS. VARGAS: Thank you.

7 THE COURT: All right.

8 Let's bring in the jury.

9 (Jury in at 9:10 a.m.)

10 THE COURT: Please be seated. Good morning.

11 As you know, the trial now is at the stage where the
12 plaintiff is presenting his evidence. And the plaintiff may
13 call his first witness. And I understand that the plaintiff
14 himself will be the next witness; is that correct?

15 MS. VARGAS: Yes, your Honor. We'd call the
16 plaintiff to the stand.

17 THE COURT: Very good.

18 And Mr. Argenyi, Ms. Roundtree will now administer the
19 oath.

20 COURTROOM DEPUTY: Please state your full name for
21 the record and spell your last.

22 THE WITNESS: Michael Argenyi, A-r-g-e-n-y-i.

23 MICHAEL ARGENYI, PLAINTIFF'S WITNESS, SWORN

24 THE COURT: You may inquire.

25 MS. VARGAS: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. VARGAS:

Q. Good morning, Mr. Argenyi. Could you please state your name again for the record?

A. My name is Michael Argenyi.

Q. And how old are you?

A. I'm 26 years old.

Q. How did you learn to speak?

A. I learned to speak -- when I was diagnosed with my hearing loss at eight months old, my mom started me immediately in speech therapy. So I don't know exactly what it was like when I was a baby because I don't have that memory, but from my understanding I was in speech therapy several times a week. A speech therapist would come to the house and would work with me. And this continued through kindergarten, through elementary school, through junior high and high school. So at least once a week, I was meeting with somebody for several years, and as needed beyond that point.

So, for example, during high school, I would go practice my presentations with my speech therapist so that she could teach me how to pronounce words that I wasn't sure how to say.

Q. Can you hear yourself speak?

A. I can hear -- I can hear my voice, but I can't actually monitor myself. I can't always tell that I say something wrong. People point out when I've said something wrong quite

1 often.

2 Q. What factors affect your ability to understand spoken
3 speech?

4 A. So, when I'm listening to somebody and trying to lip-read
5 them, I have to put what sound I can try to hear together with
6 the movement of their mouth. Some people, they're clear, they
7 move their lips well. A lot of people are really difficult to
8 understand.

9 So, for example, some people talk like they've got
10 marbles in their mouth. They mumble. They might have facial
11 hair that gets in the way, I can't see their lips clearly.

12 Other factors that come into play are if there's more
13 than one person, I start having trouble following the
14 conversation.

15 Background noise is also difficult. If there's
16 background noise that impedes with what I can try to lip-read
17 from that person, then I have a harder time even trying to --
18 trying to understand the lip movement that they're giving me.

19 Q. Can you explain what lip-reading is?

20 A. Lip-reading is when I look at somebody's face and they
21 move their mouth in certain ways that go with the same kind of
22 sounds. So depending on the sound, the lips move one way or
23 another. Some share the same movement, but depending on the
24 context, I try to figure out which one they just say. And I
25 try to understand the words from looking at their lips.

1 Q. Are you able to understand speech from lip-reading alone?

2 A. I can understand much of basic conversation. If I don't
3 understand something, I ask to repeat. If I still don't
4 understand, like, with my friends sometimes, you know, I still
5 get stuck on a word. And I ask them several times. They'll
6 pull out their phone and they'll type it on their phone like a
7 text message and show it to me. So I can understand a good
8 amount, but not everything.

9 Q. What factors influence your ability to lip-read people?

10 A. What factors? So, things that influence my ability to
11 lip-read people again are do they have facial hair that cover
12 up their lips, do they have an accent. So here in America,
13 people tend to speak very openly. They open their mouths.
14 They show a lot of expression in their faces.

15 When I've talked to people from other countries, a lot of
16 them come from places where their language is more in the back
17 of their throat. They talk more gutturally. They don't move
18 their lips as much.

19 Other things are I have a hard time understanding kids
20 because they haven't really developed their palate. They're
21 also kind of talking all over the place. They go from topic
22 to topic. They babble. They don't understand that they have
23 to face me as a deaf person, so...

24 Q. Can you give an example of a person who you can lip-read?

25 A. Probably the person that I have the best time lip-reading

1 is my mom. I've grown up with her, I've known her for 26
2 years old [sic]. She was at every meeting for me. And
3 because she raised me with cued speech, I got very, very used
4 to her lip movements.

5 The other thing is when I come home, we talk about the
6 same things. She'd ask me how school was going, how were my
7 dogs. We'd talk about the same things over and over, how my
8 brother's doing. The content is predictable. And even at the
9 time I'm still not catching something, then she has the cued
10 speech.

11 Q. And can you give an example of a person you have a hard
12 time lip-reading?

13 A. So, in college I had a professor for my history classes
14 who actually was from Boston, so he had a Bostonian accent.
15 He also had a full beard, and he talked like he had marbles in
16 his mouth.

17 I had a really tough time understanding him. So when I
18 would go to his lectures, I was completely relying on the
19 transcript I was reading during his lectures.

20 Q. Are you able to lip-read a conversation when there are
21 two other people involved in that conversation with you?

22 A. I can try to lip-read a conversation when there's more
23 than one person. But what happens is I still have to figure
24 out who was talking in that situation.

25 And so, let's say person A is speaking, and I'm facing

1 person A, I can't necessarily predict when person A is going
2 to stop talking and when person B is going to start talking.
3 So by the time I figure out that person B has started talking,
4 I turn my head, and I tend to miss the beginning of the
5 sentence.

6 So it is kind of a ball bouncing back and forth. And I
7 have a hard time participating in those conversations because
8 I'm just trying to follow that bouncing ball.

9 So what happens over the course of the conversation, I
10 start to lose more and more of what's going on. So I have a
11 general idea maybe of what's happening, but not all of these
12 details.

13 Q. In a setting like that, could you ask people to repeat
14 what they're saying?

15 A. I can, and I often do. I hang out with my friends in
16 groups, you know. Most of my friends are hearing people.
17 They talk, they don't sign, they don't know cued speech. And
18 sometimes I ask them, "Can you repeat yourself?" "Whoa, I
19 didn't catch that. Can you back up?"

20 But it's not the same. They give me a summary or they
21 say it's not important; or even if they repeat themselves,
22 they tend to forget five sentences later. People talk the way
23 that they're used to. It's a natural habit.

24 Q. What happens in larger group settings?

25 A. In larger groups, it's like that bouncing ball analogy.

1 It goes from person to person to person. For example, in a
2 classroom setting, maybe you have an undergraduate that is 20
3 students -- 25 students, maybe, in rows. If I'm sitting in
4 one place, and there's a conversation going on, I don't know
5 where that -- where the other person is talking from. I have
6 to turn, scan the room, figure out where that person is
7 talking from. And then by that time they might have finished
8 their comment.

9 Q. What is cued speech?

10 A. Hold on.

11 Cued speech is a way of showing what sounds look like.
12 So, when your lips move, some of them look the same. My mom
13 gave the example yesterday of "mom" and "Bob". I can't tell
14 the difference between those.

15 Or, for example, I have a hard time telling apart the
16 word "urology" and "neurology". They look exactly the same to
17 me. In fact, I had a particular classmate tell me that she
18 was interested in going into urology, and I thought she said
19 neurology. So I started asking her all these questions about
20 what that was -- you know, what part of the brain she was
21 interested in, what she wanted to do. And she looked at me
22 with this puzzled face. And had I been able to use cued
23 speech in that context, I would have caught that there was an
24 "N" at the beginning but I couldn't understand.

25 Q. With whom do you use cued speech?

1 A. I use cued speech with my family and -- and I've used it
2 in the educational setting.

3 Q. Can you hear voices on the radio?

4 A. I can hear them, I cannot understand them. It's garbled.

5 Q. Why can't you understand them?

6 A. Because I don't know how to understand them. Growing up
7 I didn't have the ability to discriminate speech, to put those
8 sounds together.

9 So even after the cochlear implant, I do a little bit
10 better, but I can't piece everything together to make sense.
11 I may catch a piece here, but then I can't catch the next
12 piece, so my brain gets stuck. And I can't put it together.

13 Q. Did you have accommodations in elementary school?

14 A. Yes, I had accommodations in elementary school.

15 Q. What were those accommodations?

16 A. I started with a cued speech interpreter from first grade
17 through -- on and up.

18 Q. And who provided those accommodations?

19 A. The school district did.

20 Q. Did you have accommodations in middle school?

21 A. Yes, I had accommodations in middle school.

22 Q. What accommodations did you have there?

23 A. In middle school, I started with a cued speech
24 interpreter in seventh grade. In eighth grade, we started
25 looking for additional accommodations. The school district

1 felt that the workload was increasing, the kind of setup in
2 the school was changing, it was turning more and more into
3 lectures. It was turning into -- you know, in elementary
4 school, it's a lot of interactive activity. You move around,
5 you go to music class, you go to gym, you set up stations, you
6 get into groups and play on the floor. They try to make it
7 fun to occupy kids.

8 By the time you get to eighth grade, they're preparing
9 you for the setup of high school. So at that time, they said,
10 "Let's try CART and see how it worked." We actually
11 originally tried a computer typist who I would sit next to the
12 computer -- the person who was typing on the computer. And
13 she would try to type up what was going on. And it wasn't
14 fast enough to keep up. I wasn't able to participate, so they
15 got rid of that idea pretty quickly.

16 So, next we tried a CART -- we tried CART with somebody
17 who makes a transcript on the screen like you saw yesterday.

18 Q. So when you were in middle school, who provided the cued
19 speech interpreters?

20 A. The school district did.

21 Q. And when you were in middle school, who provided the
22 CART?

23 A. The school district did.

24 Q. Did you have accommodations in high school?

25 A. Yes, I did.

1 Q. What were those accommodations?

2 A. The accommodations were the same. I had a cued speech
3 interpreter and I had CART. By that time, I used CART for
4 pretty much all of my classes except music and language. I
5 was taking German at that time, so I used a cued speech
6 transliterator for German.

7 Q. Why did you use a cued speech transliterator for German?

8 A. I used a cued speech interpreter for German because it's
9 another language. It was a way for me to see how these words
10 were pronounced in German.

11 Cued speech can be adaptive to different languages, so it
12 can show you the different sounds like the "c-h" in Bach. In
13 German, there's a way to cue that on the face to show me
14 that's the sound being used.

15 Q. Okay. And these accommodations that you had in high
16 school, who provided them?

17 A. The school district did.

18 Q. Did you take any community college courses while you were
19 in high school?

20 A. Yes. I took some community college classes. In
21 Washington state they allow you to take some community college
22 classes while you're still in high school.

23 Q. And what community college did you attend for those
24 classes?

25 A. I attended Cascadia Community College.

1 Q. And did Cascadia Community College provide you any
2 accommodations?

3 A. Yes, they provided me accommodations.

4 Q. What did they provide?

5 A. They provided me CART.

6 Q. When did you graduate from high school?

7 A. I graduated from high school in 2004.

8 Q. And did you go to college?

9 A. Yes. I immediately went to Seattle University that fall.

10 Q. And what was your major when you started at Seattle
11 University?

12 A. I started off as a history major. I had a teacher in
13 high school that taught me European and --

14 COURT REPORTER: I'm sorry, can you repeat that for
15 me? Can you repeat?

16 A. Certainly.

17 I started off with a history major. I had a teacher in
18 high school that had taught me European history, and he had
19 gone to Seattle University. And so -- and he spoke very
20 highly of the department, so I kind of followed in his
21 footsteps.

22 BY MS. VARGAS:

23 Q. Does Seattle University have any religious affiliations?

24 A. Seattle University is a Jesuit school.

25 Q. When you enrolled in Seattle University, did you request

1 any auxiliary aids and services?

2 A. I met with the Director of Disability Services and asked
3 for CART and cued speech interpreters, if there was one
4 available in the area.

5 Q. And why did you request those auxiliary aids and
6 services, those specific ones?

7 A. I requested those accommodations because they were
8 necessary. They were what allowed me to get all of the
9 information in high school, and I knew they would allow me to
10 have access to all of the information during college.

11 Q. Did you provide any documentation?

12 A. I provided an audiogram.

13 Q. Did you provide any other documentation?

14 A. I did not.

15 Q. Who made the decision what auxiliary aids and services
16 Seattle University would provide?

17 A. The Office of Disability Services.

18 Q. And that was Seattle University?

19 A. (No response.)

20 Q. Was that Seattle University?

21 A. Yes, that was Seattle University.

22 Q. How did Seattle University respond when you asked for
23 CART and cued speech interpreters?

24 A. I did not have any problem. They started to schedule
25 CART for my lectures. And they let me know that there was not

1 a qualified cued speech interpreter in the area, which was to
2 me acceptable because at that time there were no classes that
3 I found explicitly required having the cued speech
4 interpreter. I was taking lecture classes, as in electrical
5 engineering, and some history classes where -- which were
6 lecture style. And at that time, they were effective for that
7 setting.

8 Q. Who paid for the auxiliary aids and services at Seattle
9 University?

10 A. Seattle University did.

11 Q. Did they ever ask you to pay for them?

12 A. No, they did not.

13 Q. And during your time at Seattle University, during what
14 classes did you use CART?

15 A. I used a CART for pretty much all of my classes. I used
16 CART for my history lectures, for my chemistry lectures, for
17 really just about all of my classes.

18 Q. And for what classes did you use cued speech interpreters
19 at Seattle University?

20 A. In the second year when I was a sophomore, there was a
21 cued speech interpreter who relocated to the area. So I had
22 started taking Hebrew at the University of Washington, and I
23 used her for the Hebrew course.

24 Also, when I started the signed classes, there were
25 associated labs. And in these labs, I used a cued speech

1 interpreter. We would go into the room and we were moving
2 around.

3 Q. And what was your experience in using those cued speech
4 interpreters at Seattle University?

5 A. My experience is that they gave me full access to the
6 labs.

7 Q. Did you have any other experiences at Seattle University
8 with cued speech interpreters?

9 A. I did. I used a cued speech interpreter for my physics
10 course.

11 Q. Can you describe that experience?

12 A. That case, it was not as effective as it should have
13 been. I did not have access to all of the information.
14 Unfortunately, in retrospect that was not the best choice that
15 I had made, but it was something that I was trying. I wanted
16 to know how it would go.

17 In that situation, I just could not understand all of the
18 technical language from the physics course. And it was just a
19 blur trying to watch her cues, trying to take down all of that
20 information, trying to comprehend the new -- this vocabulary
21 in that situation. The course followed a textbook, so it was
22 more predictable content, so I was still able to keep up.

23 Q. Did you have access to all of the content in the physics
24 class with the cued speech interpreter?

25 A. No.

1 Q. At what point in your education did you receive cochlear
2 implants?

3 A. I got my first cochlear implant when I started at Seattle
4 University.

5 Q. And at what point in Seattle University did you get the
6 first cochlear implant?

7 A. I got the second cochlear implant after I had graduated.

8 Q. The first cochlear implant, at what point during your
9 time at Seattle University did you get the first cochlear
10 implant?

11 A. I'm sorry, I misread the question.

12 I got the first cochlear implant during the fall at
13 Seattle University, my freshman year.

14 Q. All right. And after you got that first cochlear
15 implant, what auxiliary aids did you use at Seattle?

16 A. I continued to use CART and cued speech interpreters.

17 Q. Why did you continue to use CART and a cued speech
18 interpreters after that first cochlear implant?

19 A. I continued to use CART and cued speech interpreters
20 because I still could not understand speech. I still -- even
21 with lip-reading, I still could not understand everything. I
22 still missed classroom discussion. I still could not actively
23 participate if I did not have access to that information
24 there.

25 Q. When did you graduate from Seattle University?

1 A. I graduated in 2008.

2 Q. Did you have any jobs while you were in college?

3 A. Yes. I started working as a CNA my sophomore year.

4 Q. What's a CNA?

5 A. A CNA is a certified nursing assistant.

6 Q. And in what state did you work as a CNA?

7 A. It's not clear.

8 Q. In what state did you work as a CNA?

9 A. I worked in Washington state only.

10 Q. And where did you work as a CNA?

11 A. I worked as a CNA first in a nursing home and then the
12 longest time I worked at Seattle Children's Hospital.

13 Q. Did you work anywhere else as a CNA?

14 A. I worked briefly in an adult hospital.

15 Q. And generally, what were your responsibilities when you
16 worked as a CNA in Washington state?

17 A. So my responsibilities generally would have been to help
18 with the activities of daily living for patients or residents
19 of the nursing home. It depended on the facility that you
20 worked in exactly what you were given.

21 Q. So, let's talk about the nursing home first. What kind
22 of responsibilities did you have at the nursing home?

23 A. So, the first nursing home that I worked at, I had
24 responsibilities of helping the residents get up in the
25 morning, getting them dressed, helping with bathing if they

1 were scheduled for a bath that day.

2 A big part of my day was assisting with meals, handing
3 out food trays, assisting residents who could not feed
4 themselves; so basic activities like that that they needed
5 assistance with.

6 Q. And at Seattle Children's Hospital, what kind of
7 responsibilities did you have as a CNA there?

8 A. At the Seattle Children's Hospital, some of my
9 responsibilities included going into the rooms and taking
10 vital signs, taking care of the families and patients that
11 were there.

12 So, for example, when I would enter the room, I might be
13 responsible for changing diapers, giving bottles to the
14 babies, handing out food trays. I was responsible for
15 transporting to X-ray or other places on the floor.

16 Q. Did you have any other job responsibilities at Seattle
17 Children's?

18 A. I had -- there were -- my responsibilities at Seattle
19 Children's Hospital were relatively limited compared to other
20 people, other friends of mine that worked as CNAs.

21 For example, one of my friends worked at the emergency
22 department at another hospital as a CNA, and there he was
23 allowed to do casting and more procedures independently
24 because that's just what their -- that was their policy at
25 that hospital.

1 At Seattle Children's Hospital, anything invasive was
2 overseen by a physician or nurse. So, my responsibilities
3 were assisting the nurses and those doctors, but I didn't do
4 procedures directly.

5 In fact, for example, when I worked in the emergency
6 department, casting was not even handled by the doctors in the
7 emergency department. They would specifically call for the
8 orthopedic team to do all of the casting. That was just the
9 hospital's policies.

10 Q. How did you feel about your work as a CNA?

11 A. I loved my work. I was looking for a job, and people
12 recommended -- I had several friends who were CNAs, so I
13 decided I would try it. And once I got into that environment,
14 I just absolutely loved it.

15 I got to be the person that provided the comfort,
16 especially in the emergency department. That was my favorite
17 environment because the patient and the families would come
18 in, they might be really scared what was going on or, you
19 know, just nervous that they're in that situation.

20 And the nurses and the doctors, their role in that
21 situation is to do what they need to do medically. They're
22 running all over the place, they've got several patients each,
23 and they don't have the ability to be there for the families.

24 And I, as a CNA, was the person that helped everything go
25 smoothly. I kept everything ready for the doctors and the

1 physicians. I was able to be the person that was in the room
2 to help these families just feel more comfortable, to get them
3 the warm blanket that they wanted, to get them the water that
4 they needed, to get through their time in the emergency
5 department.

6 Q. What accommodations did you request at Seattle Children's
7 Hospital?

8 A. I asked for a text pager, a text pager where they could
9 send me a text or -- letting me know where I should be. So,
10 in the emergency department, we had two wings. We had the
11 front emergency department, and then we had a back room where
12 we could open up more rooms if we got busy.

13 So, in that case, they needed to be able to have a way to
14 reach me. Typically, they would give me a phone so they would
15 be called and told where they needed to go or to grab
16 supplies, but I can't understand a phone. So instead they
17 would give me a pager, and then I would go to the front desk
18 to follow up.

19 Q. Were there any times at Seattle Children's where you did
20 use the phone?

21 A. Yes. So, because I had a text pager, typically what they
22 did is they would leave the extension for the phone number at
23 the front desk. So I could go to the phone and I could call
24 back. And I could say, "This is Michael, I'm busy. I know
25 that you requested me, but I can't come right now. Please let

1 somebody know that I'm just not available," and then I would
2 hang up.

3 Q. Were there any other circumstances where you used the
4 phone at Seattle Children's?

5 A. I also used the phone in a similar fashion when I would
6 take patients to radiology. I tried to work with Children's
7 Hospital to change -- because it was frustrating. What
8 happened is I would take somebody down to the X-ray room, and
9 you had to wait outside the door. They'd shut the door if
10 there was another patient in there. But there were other
11 times where it was closed just because they forgot to leave it
12 open. So you had to call in to let them know that you were
13 there.

14 So, in those situations I would call in, let them know
15 that I was here, and I could tell whether somebody answered or
16 did not answer.

17 But actually, in trying to work with them to have a light
18 system put in where they would put on a light if the room was
19 occupied.

20 Q. So, when you used the phone to enter the radiology
21 department, what was your ability to understand what the
22 person said to you on the other end of the phone?

23 A. I didn't have the ability to understand what the other
24 person said. I think they started to pick up on the fact that
25 they knew it was my voice, and they knew that I was one of the

1 people from the emergency department. So when they heard me
2 say, "This is Michael," they actually just started hanging up
3 and coming to the door.

4 Q. How did your ability to use the phone change -- or did
5 your ability to use the phone change when you got your
6 cochlear implant?

7 A. Yes, it changed. So, before, when I had the hearing aid,
8 I really couldn't tell what was going on on the phone. I
9 would pick it up and there would just be, like, static so I
10 would know that somebody had answered.

11 When I got the cochlear implant, I was pretty excited. I
12 tried to start using the phone, and I could hear that there
13 were voices. And I was hoping with time that I would be able
14 to actually use it, compared to never being able to use it
15 before.

16 Q. Could you understand the voices on the phone after your
17 cochlear implant?

18 A. No.

19 Q. Did you communicate with patients at Seattle Children's?

20 A. Yes, I did.

21 Q. What was your means of communication with them?

22 A. With the patients at Seattle Children's Hospital, I
23 primarily used speechreading. If I didn't understand
24 something, I would pull in someone else to help me. So -- or
25 inform the nurse that I had not gotten the question -- the

1 answer to the question that I had asked and she needed to
2 follow up.

3 Q. What was the communication like at Seattle Children's
4 Hospital?

5 A. At Seattle Children's Hospital, the communication for me
6 was pretty basic. It was a lot of directives. So I would go
7 out to the waiting room, call a name, tell them, "Come on
8 back, we're going to room 3."

9 We would go into room 3. I would say, "My name is
10 Michael, I'm your emergency department tech today." That was
11 our official title. And, "I'm going to get you settled. I
12 need to take your vital signs."

13 And then I would take the vital signs, you know, blood
14 pressure using the machine. I might take their height and
15 weight. I might take their O₂ saturation. Then I would get
16 them settled, and I would ask them, "Do you need water? It's
17 there. Can I get you a warm blanket?" If they were allowed
18 to have food, I might give what the food choices were and ask
19 if they were interested in any of those.

20 Q. How much of that communication did you understand?

21 A. I would say I understood, you know, 70 percent.

22 And then if I didn't understand something because maybe
23 the patient was an immigrant or had a parent who were
24 immigrants with an accent, then I would have somebody that
25 would come in with me.

1 Q. Why did you apply to medical school?

2 A. I applied to medical school because my work as a CNA is
3 really what set me off on to that path. I really enjoyed
4 being in that medical setting, and I loved giving basic
5 patient care. I loved being there for the patient.

6 But I saw myself -- when I would watch the doctors and
7 how they would look at these patients as a puzzle, you know,
8 the patient would come in, and it's a puzzle. You want to
9 look at all of this information that they give you, all of the
10 symptoms that they give you, the history that they describe,
11 the family background that they describe. You have to take
12 all of that information and put it together and figure out
13 what's wrong and what can we do to make this better? And that
14 just sounded like a perfect role.

15 Q. I'm going to show you what's been marked as Plaintiff's
16 Exhibit 200 -- I'm sorry, Defendant's Exhibit 200.

17 Do you recognize this document?

18 A. Yes, I recognize this document.

19 Q. What is it?

20 A. This is my application to medical school that I sent to
21 all of the schools that I applied to during 2008-2009
22 application cycle.

23 Q. Okay. Is this a true and accurate copy of that
24 application?

25 A. Yes, it is.

1 MS. VARGAS: Your Honor, at this point I'd move to
2 have Defendant's Exhibit 200 entered into evidence.

3 MR. MOORE: No objection.

4 THE COURT: Exhibit 200 is received.

5 MS. VARGAS: Thank you, your Honor.

6 BY MS. VARGAS:

7 Q. Mr. Argenyi, if you could please turn to page 9 to 10 of
8 the application, the personal essay.

9 A. Got it.

10 (Off-the-record discussion had.)

11 BY MS. VARGAS:

12 Q. Page 7 is the personal essay, so we're all on the right
13 place.

14 Can you look -- could you look at the second to last
15 paragraph of the second page of your personal comments which
16 is page 8 of the application. It begins with the words
17 "without medicine".

18 A. Yes.

19 Q. Can you tell me about that paragraph? Why did you
20 mention physicians?

21 A. I mentioned physicians because when a hearing impaired or
22 deaf child is born, the diagnosis has to start with a medical
23 exam. When I go in, it's the doctor that tells my mom about
24 what kind of communication strategies are out there, what kind
25 of services I need to get connected with. It's the doctor

1 that writes the referrals for the audiologist, for speech
2 therapy, for everything. It all starts with the doctor.

3 Q. Can you tell me about how the physicians impacted your
4 ability to use the phone?

5 A. Yes. So, over time the technology developed from hearing
6 aids to cochlear implants. As I explained before, with
7 hearing aids, I couldn't use the phone at all. I could really
8 hear nothing, it was static.

9 With the advent of the cochlear implants, once I got one
10 of those, I was able to use the -- to understand whether I got
11 an answer or not on the phone.

12 Q. And if you could look at the last paragraph on that page,
13 could you read that paragraph, please?

14 A. The last paragraph? "Based on my personal and
15 professional experiences, I have an appreciation of the
16 extensive coordination of the health care team, from
17 physicians to allied health care professionals. Because of my
18 history training, I also have a strong sense of duty to
19 deliver medical care that incorporates an understanding of the
20 socioeconomic factors behind health issues. I want to enable
21 people to do what they dream by allowing them maximum physical
22 and health capacity by helping them make appropriate medical
23 decisions for treatment and prevention. One of those patients
24 might eventually choose to practice medicine like I am right
25 now."

1 Q. Thank you.

2 And could you turn now, please, to what's marked as page
3 6 of your application -- a few pages previous to that.

4 On the bottom you mention the Association of Medical
5 Professionals with Hearing Loss. Can you tell us what that
6 is?

7 A. The Association of Medical Professionals with Hearing
8 Loss is a organization that was started some number of years
9 ago to try to network different health care providers with
10 hearing loss. So there are veterinarians, physicians, nurses.
11 I know at the time when I joined there was a very active
12 emergency -- EMT.

13 And so it's an organization where they discuss, like, the
14 different challenges in being a successful health care
15 provider with hearing loss. They discuss different things,
16 such as how to use a stethoscope, the different stethoscopes
17 such as visual stethoscopes and amplified stethoscopes. They
18 discussed how to use the interpreters, the using of
19 interpreters in the clinic. They discussed -- they discuss
20 any kind of challenge or barrier -- challenge that comes up.

21 Q. And it says on page 6 of your application that you
22 attended a conference in April 2008. Can you tell us about
23 that conference, please?

24 A. So, at that conference, there was a weekend -- I think it
25 was one full day with a breakfast the next day or something in

1 Utah. So I flew down and I went to this conference.

2 There were several lectures. The conference itself was
3 completely accessible. They had CART providers as well as
4 interpreters for everybody who was there. They did voice
5 interpretation, so somebody would speak, and somebody else was
6 signing so everybody that was there with different kinds of
7 hearing loss could understand.

8 They covered topics that range from how to sign different
9 medical terminology. They covered topics such as what medical
10 school residency looked like with interpreters and
11 accommodations. There were other things on how to maximize
12 the use of technology during medical -- during -- in the
13 medical setting.

14 Q. And when you say "maximize technology," what was the
15 purpose of -- what do you mean by that term?

16 A. I mean maximize such as going in -- like what kind of
17 stethoscope to pick which is really the best fit for your kind
18 of hearing loss; how to maybe modify some of the cochlear
19 implant programs. You can change the program on the cochlear
20 implant. Some can be better for picking out, like, lower
21 frequency noises, such as breath sounds. Some of them might
22 be better for picking up higher pitch noises and how to
23 find -- how to work with your audiologist to find the little
24 tweaks that will maximize and give you the most information
25 possible.

1 Q. At that conference, did they have examples of that kind
2 of technology that you were talking about for you to actually
3 experiment with?

4 A. They had examples of the stethoscopes. They had two or
5 three different amplified stethoscopes and they had visual
6 stethoscopes at that time.

7 Q. Did they have any other type of equipment or any other
8 things that the deaf physicians or deaf nurses used in their
9 medical practice?

10 A. They covered the different kind of pagers that people
11 used in the medical setting. Pagers are a pretty common piece
12 of equipment that physicians have. You know, you're on the
13 floor, you're on call, you get paged, you go to the phone.

14 So in these cases, they showed us a two-way text pager,
15 they showed us voice to text pagers where somebody would speak
16 a message and it could get converted to text for that
17 physician.

18 Q. Okay. And do you remember any of the people you met at
19 that conference in particular?

20 A. I remember several that I met.

21 MR. MOORE: Your Honor, at this point can we have a
22 sidebar?

23 THE COURT: Yes.

24 (Bench conference on the record.)

25 MR. MOORE: I just want to make sure we have a

1 complete understanding that this is not trying to get
2 Dr. Moreland's testimony in through the witness here to the
3 extent she's going to ask what did Dr. Moreland tell you about
4 his own personal experiences, what he used or what other
5 physicians or folks may have used, again that's getting in --
6 they're skirting the back door around your order.

7 MS. VARGAS: I understand perfectly the boundaries,
8 and I have no intention of skirting around them, as well as
9 Mr. Moore said yesterday it was relevant and Mr. Argenyi could
10 testify about who he met at that conference and what impact
11 that had on his decision to go forward on the medical
12 profession. Mr. Moore said Mr. Argenyi could testify about
13 that, and I'm trying to ask him about that now.

14 THE COURT: And I'll just note that as long as
15 Mr. Argenyi is not asked to tell what Dr. Moreland said to
16 him, I think we'll be okay.

17 MS. VARGAS: That's not the testimony I'm trying to
18 elicit.

19 MR. MOORE: Very good.

20 THE COURT: Thank you.

21 (End of bench conference.)

22 BY MS. VARGAS:

23 Q. Did you meet anyone at that conference who sticks out in
24 your mind?

25 A. Yes. I met three people in particular. When I attended,

1 I knew that I was interested in attending medical school, so I
2 sought out other physicians. I met three that I kept in touch
3 with, and I remember a fourth that I talked to at that
4 conference.

5 So I talked to Dr. Christopher Moreland. I talked to
6 Dr. Jessica Dunkley, who was from Canada. I talked to
7 Dr. Jennifer Lied, and I talked to Dr. Wendy Osterling.

8 Q. How did you feel after meeting those people and talking
9 to them?

10 A. I felt very empowered. These are four physicians who
11 actually had already graduated medical school. Some of them
12 were independently practicing -- I think two of them at that
13 time, maybe three were still in residency, still in training
14 but had graduated.

15 And at that time, these were all people who had also --
16 were severely to profoundly deaf and had trouble growing up,
17 used interpreters growing up.

18 So after talking to them, it was, like, okay, I can go
19 through -- medical schools do work with people who are deaf.
20 They do provide in those settings, and you can be just as
21 competent as anybody else when you graduate.

22 Q. So let's turn back to how you ended up in medical school.

23 When did you apply did Creighton University?

24 A. I applied to Creighton University during the 2008-2009
25 cycle. So the cycle itself opens up in June of 2008, of that

1 cycle, and then you can work on your application through the
2 summer. The application itself had to wait for my test
3 scores, so the application did not get submitted until the end
4 of September.

5 Q. And what was Creighton's response to your application?

6 A. The response was that I had been invited to an interview.

7 Q. And did you go for an interview at Creighton University?

8 A. Absolutely. So my undergraduate was Jesuit, and
9 Creighton University is a Jesuit school. We heard about
10 Creighton University a lot. The other premedical students at
11 Seattle University were also interested in going to Creighton
12 University. My premedical advisor talked about it. And I
13 know we had the -- I don't remember the title, but there's a
14 person at the medical school who does, like, outreach, goes to
15 other schools to talk about what their medical school is like.
16 I didn't have an opportunity to meet him, but I know that he
17 came to Seattle University to talk to the school. So I knew
18 about Creighton. And the name was prominent in my head.

19 I also grew up in Iowa, so I've been around the Midwest.
20 And I came here as a kid for audiology, like intense audiology
21 exams so I was pretty excited about returning here.

22 Q. What aspect of a Jesuit education appealed to you?

23 A. So, what I really liked about my time at Seattle
24 University is they had a really strong commitment to social
25 justice. When I was growing up, I was always kind of the kid,

1 save the animals, recycle everything. It was dorky, but that
2 was me.

3 Q. So turning back to your visit to Creighton for your
4 interview, tell me about that interview. Where was it held?

5 A. So when I came for the interview, in medical school
6 you're pretty much required to go to the school to interview.
7 You fly out. There's an intense interview process. They want
8 to meet you, kind of see who you are, do you have a good
9 personality, are you accurately representing yourself, you
10 know. So you're not some crazy person who doesn't really know
11 what you're talking about.

12 So you get to their school, and there's usually a full
13 day with a lunch somewhere in there. And they walk you
14 through the campus. They give you a tour, what it looks like.
15 They try to show you what's good about their facility. Maybe
16 they're building a new gym, they show that; maybe they're
17 building a new hospital, they show that to you. They talk
18 about the perks and benefits. They talk about what the
19 overall cost would be. They give you a deadline -- or
20 timeline, I should say, when you'll hear back about the
21 decision. And they give you all of this information in
22 packets as well.

23 I get there. We started off with an introduction in the
24 morning, welcome to Creighton University, congratulations on
25 your interview. We went through some workshops that I don't

1 really recall at this point. And then sometime during that
2 day we did an interview. The interview itself looks a little
3 bit different at each school. At Creighton University there
4 were two, there was a student interview and there was a
5 faculty interview.

6 So, for the interview we were escorted over to Creighton
7 University Medical Center, and the interviews were held in
8 these mock patient rooms. There's a clinical assessment
9 center. It's set up to look like an outpatient clinic with
10 little rooms, with an examination table, and enough room to
11 move around in. So, it's called a clinical assessment center.

12 So when we got there, we got into the room and we
13 interviewed. I first interviewed with a student, some girl
14 that I don't really remember her name. I think she was in her
15 third or fourth year. And next I interviewed with a faculty
16 member named Dr. Barone.

17 Q. During the first interview with the student, how many
18 people were present in that interview?

19 A. Just one person.

20 Q. Just you and who else?

21 A. Just me and the student that was interviewing me.

22 Q. Okay. And how did you communicate during that first
23 interview?

24 A. I communicated using speechreading. This was a -- when I
25 came to the interview, I wanted to be able to build that

1 rapport with the person that I was interviewing with. I
2 wanted to be able to just be myself with that person. The
3 content is also really predictable.

4 In general, when you apply to a medical school, you
5 really want to get in, so you prepare for this interview. You
6 review -- you go on to the Web site. You learn what you can
7 learn about Creighton University. You learn what you can
8 learn about the School of Medicine. You go over the
9 application that you had submitted. You just kind of review
10 your story.

11 The questions are more or less predictable. Why do you
12 want to come to Creighton University? What made you want to
13 become a doctor? Where do you see yourself when you become a
14 doctor? If there's surprise questions -- and there are some
15 surprise questions, but in general it's pretty predictable
16 content, and a lot of it is pulled from the application.

17 So, for example, when I talked with the student, I
18 remember that she came in and she said she was so excited to
19 talk to me, that she looked over my application, she wanted to
20 know about my volunteer work with the Alaskan malamutes, with
21 the dogs.

22 Q. And how was your communication with that student during
23 the first interview?

24 A. My communication with that -- if I didn't understand
25 something, I could ask and she could repeat it to me. It was

1 also predictable. I knew what was likely to come. It was a
2 conversation, it was a back and forth, it was slow paced.

3 Q. What about the second interview, who was present for the
4 second interview?

5 A. At the second interview, it was Dr. Barone, if I can
6 remember, and myself.

7 Q. And can you tell me about -- how did you communicate in
8 that interview?

9 A. I communicated in a similar fashion. I did
10 speechreading. It was conversational back and forth. If I
11 didn't understand something, I asked again. It was just like
12 the other one.

13 Q. During your interview, did the topic of your deafness
14 come up?

15 A. It did. I was open about it in my application which
16 meant that it was okay to talk about it. I don't exactly
17 remember how the topic came up but Dr. Barone asked me if I
18 saw any problems with being a deaf doctor. And I said no,
19 there are challenges but I know from other people, they have
20 addressed those challenges, so, it's very possible. And I
21 really look forward to being able to overcome those.

22 Q. And after that interview, what happened next?

23 A. So, after that interview, there was about a month where
24 they take some time, they are a couple of weeks behind. Their
25 interview cycle is pretty intense. They interview so many

1 students and then -- so, they have to review those
2 applications so they said it would be a couple of weeks.

3 A couple of weeks later they contacted me saying they
4 wanted more background on my community service. So I sent an
5 e-mail outlining some other community service that I had done
6 during my undergraduate years. And then they gave me a time
7 when a decision would be made by. So they said on so-and-so
8 day, there would be a decision.

9 Q. And did you get a decision?

10 A. I did get a decision.

11 Q. And what happened?

12 A. So on that day -- you know, I couldn't wait for an
13 official letter in the mail so I actually asked my roommate to
14 call for me. So I told my roommate -- I asked my roommate --
15 I gave him the number for the office of admissions, and he
16 gets on the phone, he calls them, asks about the status of
17 Michael Argenyi's application.

18 And he keeps a straight face and, you know, he's waiting
19 for the response, and he's like (indicating) -- you know,
20 gives me this really grim look, and I'm just thinking, oh,
21 you've got to be kidding me. I've been trying so hard and I
22 had such a good feeling when I was at that interview.

23 I remember I walked out of that interview, I was so
24 excited. I said, I think this is the one I might have just
25 gotten. He gave me this grim look. And I'm thinking, What

1 can I do now. And he finishes the conversation, gets off the
2 phone and breaks into a smile and says, "You're in."

3 Q. How did that feel?

4 A. It was amazing. I mean, there's really no words to
5 describe it. I texted my mom, told her immediately. Pretty
6 much told everybody, you know, that I could that I was in.

7 MS. VARGAS: May I approach, your Honor?

8 THE COURT: Yes, you may.

9 MS. VARGAS: I'm going to be showing what's marked as
10 Exhibit -- or accepted into evidence as Plaintiff's Exhibit 1.

11 THE WITNESS: Do you think I can have some water?
12 Thank you.

13 BY MS. VARGAS:

14 Q. Do you recognize this document?

15 A. Yes, I recognize this document.

16 Q. What is it?

17 A. So, after I found out that I was officially accepted, I
18 had to wait for the official letter to come in the mail. You
19 get this nice large envelope. They tell you if it's a small
20 regular envelope, it's bad news; if it's a large envelope,
21 it's good news. I get this large packet and it has the
22 official offer of acceptance to the medical school.

23 So, included you have to sign a form that says do you
24 accept our form or do you decline our offer?

25 And then there's another form that was sent called the

1 Technical Standards Request For Accommodations that I had to
2 review and also send back.

3 Q. And can you read the date on this -- the first page of
4 this exhibit? It's a very poor copy and I apologize for that.

5 A. I believe I sent this about March 23rd in 2009.

6 Q. Okay. And could you read for me starting with -- the
7 second sentence of that paragraph, second and third sentences,
8 please.

9 A. "I am hearing impaired and I use a cochlear implant. I
10 will be requiring some accommodation during my enrollment,
11 probably similar to what I have used in the past, which has
12 been primarily interpretation or captioning services during
13 lectures and teaching sessions."

14 Q. Why did you request accommodations similar to what you
15 had had in the past?

16 A. That's what had been effective for me.

17 Q. And look -- if you could turn to the second page of that
18 application and can you explain what this is?

19 A. This is the form that I was sent by Creighton University.
20 They send this form to everybody, all the students that they
21 offer a place in the medical school. So, they also sent it
22 with a copy of the technical standards, and they have you
23 review it. And then they say will you need accommodations to
24 meet these technical standards, and I say, yes, I will need
25 accommodations and I return this form.

1 MS. VARGAS: Your Honor, I realize we've made a
2 mistake and introduced something with personal information
3 that should have been redacted, a social security number.

4 THE COURT: I see. Well, before this goes to the
5 jury, it should be redacted.

6 (Off-the-record discussion had.)

7 BY MS. VARGAS:

8 Q. And if you could turn -- I'm sorry, on this second page,
9 could you please read for me paragraph -- the numbered
10 paragraph 2?

11 A. Sign and return this original document to the Office of
12 Medical Admissions using the business reply envelope provided.

13 Two: Copy this signed document and enclose an
14 explanation with supporting documentation in an envelope
15 marked personal and confidential to: Michael Kavan, address.

16 Q. And then if you could turn to the third page and explain
17 what that is?

18 A. So this is an audiogram. I had recently had an audiogram
19 with my audiologist at my primary clinic just before this so I
20 had asked for a copy of my most recent audiogram. I tried to
21 get a copy of one because so often I'm asked to submit it for
22 documentation. It shows that I actually have a disability.

23 Q. And so how did you get a copy of that audiogram?

24 A. I asked my audiologist to get me one at the end of the
25 clinical session.

1 Q. And did you give Creighton University everything that she
2 gave you?

3 A. Yes.

4 Q. What was Creighton's response to Plaintiff's Exhibit 1?

5 A. They e-mailed me maybe a week later saying they had
6 gotten my request for accommodation and that they needed
7 further documentation. They also outlined the technical
8 standards that they thought would be relevant.

9 Q. And what did you do after you received that?

10 A. After I received that, I contacted my cochlear implant
11 physician and my audiologist that worked with the cochlear
12 implant physician who was at a different clinic. So in
13 Seattle, my primary insurance, my primary care was under one
14 provider and that provider does not do cochlear implants.

15 So they sent me to another facility. So for the cochlear
16 implant-related stuff, I went to that facility.

17 So, I contacted that doctor and I asked him for
18 documentation and to send it on to Creighton.

19 Q. And what was the name of that doctor?

20 A. That was Dr. Backous.

21 Q. And what was the name of the audiologist?

22 A. The audiologist was Stacey Watson.

23 Q. Did you contact Stacey Watson?

24 A. Yes, I did contact Stacey Watson.

25 Q. What was the purpose of your contact?

1 A. The purpose of my contact was to get the documentation
2 that Creighton University asked for.

3 Q. And what happened after you contacted your audiologist?

4 A. I was told that the letter had been sent and they sent me
5 a copy as well.

6 MS. VARGAS: May I approach the witness and show him
7 what's been accepted as Plaintiff's Exhibit 3, your Honor?

8 THE COURT: Yes, you may.

9 BY MS. VARGAS:

10 Q. Do you recognize this document?

11 A. Yes, I recognize this document.

12 Q. What is it?

13 A. This is a e-mail that I sent to Dr. Kavan where I
14 outlined my understanding of the medical school curriculum at
15 that point and what kind of accommodations would be necessary
16 for me.

17 Q. Why did you send this e-mail to Dr. Kavan?

18 A. I sent this e-mail to Kavan because he had asked me to
19 detail the kind of accommodations I would need and to also
20 confirm that medical documentation would be coming to support.

21 Q. Okay. And could you please read the last sentence of the
22 second paragraph?

23 A. I said, "Because I cannot predict all of my possible
24 needs for every situation, I would like to begin this
25 progressive conversation by just looking at the first year

1 classes."

2 Q. And could you please read aloud what you requested for
3 lectures?

4 A. For lectures I said: Due to fatigue and the general
5 large size of classrooms, I would like to request real-time
6 captioning.

7 Q. Why did you make that specific request?

8 A. I requested that because I used CART for my lectures in
9 undergraduate at Seattle University and it was effective. I
10 knew that medical school is -- everybody described it to me
11 like drinking out of a fire hydrant. It's a lot of
12 information, it's a lot of complex vocabulary.

13 For me to understand all of that language the first time
14 that it's said, for me to know what I was actually hearing or
15 seeing or reading, the way for me to do that was on a screen
16 reading the words itself.

17 Q. And why did you refer to the general large size of
18 classrooms?

19 A. I knew that when I was at Creighton University, they had
20 a workshop or presentation where they had shown slides, and
21 they discussed about what their classes were kind of like, and
22 they said they usually accept something like -- I don't
23 remember how many they said they offer acceptances to but they
24 said that the final class size is around 120, 130.

25 And I knew other medical schools -- there's a book that

1 you can buy that outlines all the different medical schools,
2 and it says what the class sizes are, and some are 70
3 students, some are 200, 300. It's large.

4 Q. And why did you refer to fatigue?

5 A. I referred to fatigue because when I'm trying to lip-read
6 or even use an interpreter in these situations, it's very,
7 very hard for me to follow that amount and complexity of
8 information and take it in and actually understand everything
9 that's going on. I can't necessarily connect what I lip-read
10 on somebody's mouth with the words that I read.

11 Q. And can you read aloud what you requested for labs?

12 A. For labs, I said, "I would like to request an interpreter
13 be present. If available, I specifically request a cued
14 speech interpreter. If unavailable, I may be able to use an
15 oral interpreter. I am not used to ASL interpretation, and
16 therefore an ASL interpreter is not sufficient at this point."

17 Q. Why did you request a cued speech interpreter, if
18 available, for class?

19 A. Cued speech is really the only kind of interpreter I've
20 ever used. I've never used an oral interpreter and I did not
21 know sign language. I said if one is available because from
22 my experiences cued speech has really only been used on the
23 East Coast. What happened, it started getting more popular,
24 families were adopting it and then the cochlear implant came
25 out at that time.

1 So all of a sudden, the new babies -- I was older, this
2 was mid '90s maybe, late '90s. So babies at that time, they
3 were getting the cochlear implants and they were pushing them
4 to try to use the cochlear implants like regular hearing.

5 So, at that point, the cued speech kind of -- it just --
6 it lost its momentum. So it didn't really spread across the
7 U.S. So, for example, when I was in Seattle, we only had one
8 cued speech interpreter and she hadn't even been there the
9 whole time that I was there.

10 Q. And what did you mean when you said you were not used to
11 ASL interpretation?

12 A. I do not know ASL. And for me to try to use an ASL
13 interpreter in that situation, it would have not been
14 effective.

15 Q. What did you mean when you said you may be able to use an
16 oral interpreter?

17 A. So, because I knew that there was a strong possibility
18 that there may not be a cued speech interpreter in the area, I
19 knew I needed some kind of interpreter in that situation. So
20 I said, you know, we can try the oral interpreter. That's the
21 next step that I can think of.

22 Q. Would you please read aloud what you requested for small
23 groups.

24 A. For small groups: I would like to request the use of an
25 FM system, if the group size is reasonably small, perhaps

1 eight people or less. This is likely sufficient without an
2 interpreter. If the group size is much larger, or the group
3 is constantly moving in busy areas, then I may request an
4 interpreter.

5 Q. Why did you request an FM system for small groups of less
6 than eight people?

7 A. I thought that in that situation the FM system would be a
8 way for me to track who was talking so it might help me with
9 that bouncing ball momentum. So I thought the conversation --
10 it was more conversational, it was slow paced. I was looking
11 for something that I would be willing to try.

12 And in the previous letter from the -- not in the
13 previous letter, but when I asked my physician for
14 recommendations, he said an FM system might be effective so I
15 thought that would be a good way to try.

16 Q. Okay. And why did you say that you might request an
17 interpreter if the group was moving around in busy areas?

18 A. So, if this moving around is in busy areas, people turn
19 away; there might be background noise, there might be -- just
20 different things get in the way of being able to lip-read and
21 being able to follow the conversation.

22 Q. And why did you say that you might request an interpreter
23 for classes larger than, say, eight people?

24 A. Eight people was a number that I thought would be
25 reasonable to start with. I thought like anything beyond

1 eight, it definitely would be too difficult for me to try to
2 follow that bouncing ball, even with the FM system.

3 Once you get into that many people, you might start
4 having side conversations or more people just start to
5 overlap. You have more people that you constantly have to ask
6 to repeat or take turns or to not talk over each other.
7 There's just less ways for me to be able to ask people to help
8 me understand what's going on.

9 Q. And when you actually arrived at Creighton University,
10 how many people were in your small group class?

11 A. My first year there were 15, and I believe that's the
12 typical class size for small groups.

13 Q. And what did you mean when you say that you request an
14 interpreter mainly to deter fatigue?

15 A. So, as I said before, for me to lip-read and try to take
16 in information through lip-reading or even an interpreter in a
17 constant setting where it's a lot of information, that it's
18 just really hard. It's like trying to -- it's like -- have
19 you ever -- if you have tried to talk under water, you can
20 kind of tell there's speech under there but it's garbled.

21 Maybe some of you have kids who have tried to do that.
22 You talk under water and it's like (descriptive sound) and you
23 try to understand what it is but you can't. That's what it
24 is.

25 Q. And could you please read the last paragraph in that

1 e-mail?

2 A. I said, "Please contact me further if you have any
3 questions or if other documentation and paperwork is needed.
4 If you would like, we can also arrange to meet face-to-face at
5 some point before classes begin."

6 Q. What response did you receive to this e-mail?

7 A. I was asked for more documentation.

8 Q. And what did you do after getting that response?

9 A. I'm sorry, can you repeat?

10 Q. You testified that Creighton responded by asking for more
11 documentation. So what did you do?

12 A. I contacted Dr. Backous and Stacey Watson again.

13 MS. VARGAS: If I may approach and show the witness
14 Exhibit No. 5, Judge? It's already been admitted into
15 evidence.

16 THE COURT: Yes, you may.

17 MS. VARGAS: Thank you.

18 BY MS. VARGAS:

19 Q. Do you recognize this document?

20 A. Yes, I recognize this document.

21 Q. What is it?

22 A. A letter I sent to Dr. Kavan on May 26, 2009.

23 Q. Why did you write this letter?

24 A. There seemed to be some concerns about whether that
25 person could become a physician.

1 Q. Okay. And would you please review the paragraph that
2 addresses your work as a CNA? What did you mean when you said
3 that you've been able to obtain -- I'm sorry, your earlier
4 experience is clear proof that you're able to function in a
5 medical setting. What did you mean by this?

6 A. I meant that it's possible for that person to be in the
7 medical environment, that I'm comfortable with that
8 environment, that it's not a way for people to -- that it
9 doesn't mean that I can't do it at all as a deaf person.

10 Q. Okay. And could you jump to the next paragraph that
11 says -- starts with "every hearing-impaired person". In that
12 paragraph, you said -- what did you mean when you said you
13 have been able to obtain clinical information in a clinical
14 setting without significant accommodation?

15 A. So clinical information included some vital signs like
16 blood pressure; the level of O₂ saturation, how much oxygen is
17 in your blood; height and weight.

18 Q. Could you please read the last sentence at the bottom of
19 the page beginning with the word "learning"?

20 A. "Learning new material without appropriate accommodations
21 results in a high level of fatigue and stress, which would
22 hinder reaching my best performance."

23 Q. And continuing on to the first sentence at the top of the
24 next page.

25 A. In order to best represent your school and my own

1 abilities, I need accommodations in the classroom so I can
2 absorb the substantial amount of information presented in
3 medical school, to then present [sic] those concepts
4 clinically.

5 Q. Could you read the next paragraph, please?

6 A. "Regarding my second bilateral cochlear implant: It is
7 the first cochlear implant that is of most significance. My
8 current abilities to perform, including at the work situation
9 at Seattle Children's Hospital, are based on my right-sided
10 implant. While I am strongly hoping that, as Dr. Backous
11 stated in his letter, the second implant may significantly
12 improve my hearing comprehension, I am also aware of the
13 literature data that show that the added benefits are quite
14 variable and unpredictable. Therefore, at this time, I would
15 like to plan my accommodations based on my current abilities
16 at this point."

17 Q. And what were your expectations for your second cochlear
18 implant?

19 A. Really, I went in for my second cochlear implant because
20 there was some data that said I might have better sound
21 localization. So with one cochlear implant and even with
22 hearing aids, there was a test that they would do where they
23 would put me in a sound booth, and they would play sounds from
24 different points around me, and I would have to close my eyes
25 and try to point where that sound was coming from, and I had

1 no ability to do that.

2 Some data showed that if you gave a person a second
3 cochlear implant, that their brain might be able to learn how
4 to do -- how to localize sound to be able to tell what
5 direction it's coming from.

6 The other benefit that the research showed was better
7 understanding of background noise. So you might not
8 understand more overall; but if you put noise in the
9 background, you might do a little bit better.

10 The research at that time was based mostly on two groups,
11 either kids that have been implanted young or adults that had
12 lost their hearing later in life and were pursuing their
13 cochlear implant.

14 Q. Why did you make your request based on your current
15 abilities at this point?

16 A. Because I had no idea what the second implant might do
17 and I needed to make sure it would be effective now.

18 Q. Can you please read aloud the next paragraph?

19 THE COURT: Let's wait on that until we have our
20 break because it is now 10:30.

21 Let's take the mid-morning break. Please reconvene in
22 the jury room at 10:45.

23 Thank you.

24 (Jury out and recess taken at 10:30 a.m.)

25 (At 10:50 a.m. on August 23, 2013, with counsel for the

1 parties, the plaintiff, and the defendant's representative
2 present, and the jury NOT present, the following proceedings
3 were had:)

4 MICHAEL ARGENYI, PREVIOUSLY SWORN, RESUMED THE STAND

5 THE COURT: Anything we need to discuss before the
6 jury comes in?

7 MS. VARGAS: No, your Honor.

8 MR. MOORE: Nothing for the defendant.

9 THE COURT: Please bring in the jury.

10 (Jury in at 10:51 a.m.)

11 THE COURT: Ms. Vargas, you may continue with your
12 examination. You may want to restate the last question,
13 please.

14 MS. VARGAS: Thank you, your Honor. I'll try to
15 remember it.

16 DIRECT EXAMINATION (Cont'd.)

17 BY MS. VARGAS:

18 Q. We've been looking at what's been accepted into evidence
19 as Plaintiff's Exhibit 5 and we're on the second page. And
20 right below the heading it says, "Regarding the difference
21 between one-on-one, small groups and large groups." Could you
22 please read the line below that, a few sentences below that?

23 A. "In general, hearing-impaired individuals function better
24 one-on-one and in small groups and have more difficulty in
25 large groups. Therefore, there is more need for

1 accommodations in those settings."

2 Q. And then below that, could you read the section titled
3 "Regarding the requested accommodations"?

4 A. Okay. The whole thing?

5 Q. Well, why don't you read the part about lectures.

6 A. "Due to fatigue and the general large size of classrooms,
7 I would like to request real-time captioning."

8 Q. And why did you write that?

9 A. So as I've explained, in a lecture setting, the language
10 is technical, it's one direction. It's also a large group so
11 if there's a question from a student, the student could be
12 anywhere in that classroom. And if I miss what the question
13 is, even if I understand the answer, I don't know what the
14 question was so the answer doesn't make sense.

15 If I have CART, the CART provider can also hear the
16 student ask that question. And when they ask that question, I
17 have the opportunity for myself to try to think of the answer
18 before the professor gives it and then I can try to match my
19 answer with the professor. So that's allowing me the full
20 participation there.

21 Q. And could you read what you requested for labs, please?

22 A. For labs I stated again that, "I would like to request an
23 interpreter be present. If available, I specifically request
24 a cued speech interpreter. If unavailable, I may be able to
25 use an oral interpreter. I am not used to ASL interpretation,

1 and therefore an ASL interpreter is not sufficient at this
2 point."

3 Q. Why did you request accommodations that were different in
4 the lecture versus the lab?

5 A. One second, it hasn't come up.

6 Q. Let me repeat that. Why did you request accommodations
7 that were different in the lecture versus the lab?

8 A. It's delayed.

9 THE COURT: Well --

10 THE WITNESS: Okay. It's up.

11 THE COURT: All right.

12 A. So, I requested different accommodations because from my
13 understanding in medical school during the first year, you
14 have anatomy lab. All medical schools -- some have changed
15 now, but most medical schools have you work on a human body.

16 So you go into the lab, you're looking at this human
17 body, you're dissecting the body, you're learning the
18 different anatomy parts, so you're moving around.

19 And we were also -- if another person or another group
20 finds an interesting detail, you might move over to that body
21 to look at it. It's just a setting where you're constantly
22 moving around.

23 MR. MOORE: Your Honor, our real-time is not working.

24 MS. VARGAS: Your Honor, may we have a sidebar,
25 please?

1 THE COURT: Yes.

2 (Bench conference on the record.)

3 MS. VARGAS: This is the plaintiff's first
4 opportunity in four years to tell his story. His story is
5 about his ability to communicate and the access he needs in
6 order to get that communication. And it's about CART. He has
7 been prohibited from making any mention of how he's
8 communicating in this courtroom.

9 Mr. Moore is making a big show of turning his laptop
10 towards the jury and pointing out it's not working, and he's
11 being permitted to make comments that would explain what's on
12 his desk and therefore prejudice what Mr. Argenyi is using. I
13 think if we're not allowed to talk about it, I think he should
14 not be allowed to talk about it either. And I make a motion
15 he not be permitted to talk about the real-time feed on his
16 desk.

17 THE COURT: I'm not sure how the real-time feed going
18 to counsel's desk and counsel's use of real-time has anything
19 to do with the other issue.

20 MS. VARGAS: The reason they've requested that is so
21 it appears they have the same accommodations Mr. Argenyi has.
22 And instead of looking at the feed, he's had it turned towards
23 the jury. When the feed just stopped, he turned the computer
24 closer to the jury and pointed at it and shaking his head and
25 stood up to say the feed wasn't working. And I think the same

1 rules need to apply.

2 I know I'm very careful. My client is being careful when
3 the feed stopped, saying something other than the truth. The
4 truth is the feed stopped. He can't understand what is being
5 said. But Mr. Moore is making a big show about the feed stops
6 for him.

7 THE COURT: Mr. Moore, why did you point out that
8 your real-time feed was stopping?

9 MR. MOORE: Because it's not working.

10 MS. VARGAS: Why do you need it, Mr. Moore?

11 MR. MOORE: I'm using -- I've used real-time in
12 probably five or six trials, your Honor. I think this is --

13 MS. VARGAS: Why don't you turn it towards yourself
14 rather than the jury?

15 MR. MOORE: Wait for the judge, please.

16 THE COURT: I'll tell you what my initial reaction
17 was when you spoke up. I thought you were suggesting a
18 sidebar because of the plaintiff's --

19 MR. MOORE: He was violating --

20 THE COURT: -- plaintiff's feed not working and you
21 were just trying to make it easier for all of us to address
22 that issue at sidebar. Frankly, nobody cares if your
23 real-time isn't working. That's between you and the court
24 reporter and --

25 MR. MOORE: And --

1 THE COURT: -- that's nothing for the jury to be
2 worried about it. It's nothing for me to be worried about. I
3 don't care if your real-time works or doesn't work. So you
4 don't need to bring it to my attention, you don't need to
5 bring it to the jury's attention. And it's certainly nothing
6 that is going to be cause for stopping the trial.

7 MR. MOORE: We're paying for it, your Honor.

8 THE COURT: I don't care. Ms. Fauber may care, you
9 may care; I don't care and the jury doesn't care. So don't
10 tell me about your real-time. That's your problem.

11 Regarding the plaintiff's feed, I am not sure what to do
12 about it --

13 COURT REPORTER: It's working now.

14 THE COURT: If there's a delay, he has said it didn't
15 come up, or there's a delay, and that's fine. I think the
16 jury sees what's going on. But we're just not going to draw
17 undue attention to it. I'm not saying you have to hide it,
18 it's there. But let's just not talk about it to any extent
19 that's not necessary to talk about it.

20 MS. VARGAS: We're making every effort not to do that
21 and the plaintiff is I think virtually trying not to state the
22 obvious.

23 THE COURT: Sure.

24 MS. VARGAS: So I appreciate it and I will continue
25 to do that.

1 THE COURT: The plaintiff has been doing everything
2 that could reasonably be expected. And we're getting along.
3 And I think we have an understanding. Okay.

4 MS. VARGAS: Thank you, your Honor.

5 (End of bench conference.)

6 THE COURT: You may proceed.

7 MS. VARGAS: Your Honor, could we have the court
8 reporter read back the last question, please?

9 THE COURT: Yes.

10 Q. (Repeated by Reporter) Why did you request accommodations
11 that were different in the lecture versus the lab?

12 A. Am I to answer again? I thought that was for your
13 reference. Sorry.

14 I requested the accommodations because, like I explained,
15 I anticipated that in that setting we will be moving around.
16 My experience in undergraduate, I had used a cued speech
17 interpreter in those settings. And it had been more effective
18 because she was able to accompany me in the different stages
19 in the chemistry lab or the biology lab or physics lab. So I
20 figured that in medical school it was going to be much the
21 same setup where we were -- we were-- we would be moving
22 around in the anatomy lab and so, an interpreter would be what
23 I needed in that setting.

24 BY MS. VARGAS:

25 Q. Okay. And going to the bottom of that same page, could

1 you please read the last two sentences of that page?

2 A. I did not utilize an FM system during my undergraduate
3 studies because of the nature of my classes, but I do have
4 prior experience with an FM system during elementary school
5 years and high school. I do believe that an FM system would
6 be useful for my medical studies.

7 Q. And what was your experience with the FM system in
8 elementary and high school?

9 A. At that time, the FM system was basically given to one
10 person who was considered the primary person in that
11 situation. So, for example, if I used an FM system on the
12 soccer team, it was given to the coach. If I used an FM
13 system in the classroom, it was given to the teacher. And
14 what happened was the FM system would send a clear signal to
15 my receiver.

16 And in elementary school, if I was in the classroom, you
17 know, we're doing things, we're rustling papers, socializing
18 with my classmates, we might be doing a project at our desk,
19 coloring project, I don't know what we would be doing. And if
20 I heard all of a sudden a voice that sounded like it was right
21 next to me, I knew it was the person with the FM system with
22 the microphone and it meant that I needed to look up and pay
23 attention.

24 Q. And why did you write: I do believe an FM system would
25 be useful for my studies?

1 A. I wrote that it might be useful in my studies because,
2 one, my doctor had recommended it in one of the letters that
3 he sent, the first letter that he sent; two, I also had gone
4 to that conference and the other deaf doctors at that
5 conference said they used an FM system, especially in things
6 like the surgical rotation.

7 Q. And why did you also request CART and interpreter
8 services?

9 A. I also requested CART and interpreter services so I could
10 access all of the information. That's what I needed to be
11 effective.

12 Q. If you could turn to the last page, please? And could
13 you read the -- beginning with the second sentence through the
14 end of that paragraph -- just read the whole paragraph, it's
15 easier.

16 A. I hope you will find this information helpful and that
17 with the addition of the new letter, you will have all of the
18 documentation you need. I am very much looking forward to my
19 studies at Creighton University and working with you and your
20 office through *[sic]* the years. There are many deaf or
21 hearing-impaired physicians working successfully in this
22 country, and I am convinced that your school will be proud of
23 having me as a successful student and graduate. As always, I
24 am dedicated to my studies with the diligence and the
25 perseverance that will be required for those extra

1 experiences.

2 Q. Why did you write that?

3 A. I wrote that because I was showing them that I was
4 absolutely committed to doing what I needed to be able to do.

5 Q. You mentioned earlier this morning that you got the sense
6 that there were some concerns from Creighton that you were
7 deaf. What gave you that sense?

8 A. What gave me that sense is that they kept asking for more
9 and more documentation, and I had sent two letters -- they
10 were asking for one or two letters at this point -- showing
11 that I would be able to be successful in that environment. I
12 had also given them examples of other students who had been
13 successful in this environment. And I felt like there was
14 still concerns about whether or not I would be able.

15 Q. Was there anything else that anyone at Creighton
16 University told you that made you concerned?

17 A. They also told me that my acceptance was conditional --
18 in a previous letter about my acceptance to Creighton
19 University, that it was conditional based on the technical
20 standards.

21 Q. When was the very first time that someone from Creighton
22 University told you that your acceptance was conditional?

23 A. In April 2009.

24 Q. And what had happened that caused them to say that?

25 A. I had asked for CART and interpreters in class and -- in

1 class.

2 MS. VARGAS: May I approach the witness, your Honor?

3 THE COURT: Yes, you may.

4 MS. VARGAS: I am showing the witness what has been
5 accepted into evidence as Plaintiff's Exhibit 6.

6 BY MS. VARGAS:

7 Q. Do you recognize this exhibit?

8 A. Yes.

9 Q. What is it?

10 A. This is the response from Creighton University. So this
11 is a letter of the offer of accommodations that I got from
12 Dr. Kavan.

13 Q. And what did Creighton offer in response to your requests
14 for lectures?

15 A. Creighton offered me a first row seat directly in front
16 of the instructor, an FM system, and access -- like other
17 medical students, access to the podcasts and PowerPoint. Also
18 they offered me note-taking services.

19 Q. And what did Creighton offer in response to your requests
20 for accommodation in the small group setting?

21 A. In the small group, Creighton offered me an FM system.

22 Q. What did they offer in response to your request in a lab
23 setting?

24 A. Creighton offered me an FM system also in the lab.

25 MS. VARGAS: May I approach?

1 THE COURT: Yes, you may.

2 MS. VARGAS: I'm showing Mr. Argenyi what's been I
3 believe accepted into evidence Plaintiff's Exhibit 7.

4 THE COURT: 7 is in evidence.

5 BY MS. VARGAS:

6 Q. Do you recognize this document, Mr. Argenyi?

7 A. Yes, I recognize this document.

8 Q. What is it?

9 A. This is the e-mail I sent to Dr. Kavan in which I said I
10 hope that these will offer me effective communication. They
11 are different than what I have had in the past but I will give
12 them a wholehearted try. I will let you know if -- should
13 they be inadequate, I will let you know immediately and work
14 with you and your office.

15 Q. What did you mean when you said you'd give the
16 accommodation a "wholehearted try"?

17 A. I meant that I would start the school year with the
18 accommodations that they set out and I would see if they would
19 work. I had some concerns already it may not be effective
20 because I knew my own ability to understand speech in those
21 settings.

22 Q. Now, I want to ask you about the start of medical school.
23 What classes did you have that first semester of medical
24 school?

25 A. In that first semester, I had an anatomy class with a

1 lab. I had a molecular cell biology class which were covering
2 the biology principles, chemical principles, how the body
3 works. And I had an interviewing and physical exam class in
4 which we had a small group as well, which was a class in which
5 we learned how to approach a patient, how to start to
6 establish that trust and bond as a doctor with a patient. And
7 I had a ethics course.

8 Q. And in your lectures in that first semester of medical
9 school, how many students were in your lectures?

10 A. Well, the class was for all 126 students so it could be
11 that many students in the class. Students had the option of
12 listening to the podcast or attending class, and I would say
13 the majority attended class.

14 Q. Can you describe for me what the lecture hall looked
15 like?

16 A. The lecture hall is a room that actually occupied two
17 floors so the ceilings were high. You could enter the room on
18 the lower -- to the first -- the lower level of that room and
19 that was the floor where the podium was. Next to that podium
20 was the projector screen where you would see the PowerPoints
21 and then the chairs themselves were like a stadium. It was
22 set up kind of like an auditorium, three sections with rows
23 that ascended. And then they ascended to the height of the
24 second floor. So you could go up to the next floor and then
25 enter from the back as well.

1 The lighting was typically pretty dim so you could see
2 the PowerPoint projection. Sometimes it was turned even
3 darker if they were trying to point out details in the slides.

4 The acoustics of that room were kind of -- were different
5 because part was concrete where the chairs were and parts were
6 carpeted so sound kind of would move around in the room in a
7 way that was difficult to understand.

8 Q. And what was your experience in the lecture setting in
9 that first month of medical school like?

10 A. My experience was that I could not understand the
11 professors. They gave me an FM system so I wore the FM
12 system, and it was like having the professor sit right next to
13 me and talk. So the signal was there but it didn't help me
14 understand what was being said.

15 Many of those professors moved around. Even though I was
16 seated in a good place with -- to see that professor, that
17 professor didn't necessarily stand at the podium. For
18 example, I had one professor for my anatomy class who was
19 quite fond of walking around. He said he could not stand
20 still, that he could just not stand up there and talk so he
21 would actually walk up and down the steps. So he could be
22 lecturing from three-fourths up the stairs, walk back down,
23 continuously talking.

24 The other thing, even though I could hear as in perceive
25 the sound of my professor talking, if there was a question, I

1 didn't know what was being said. During the ethics class, we
2 had open discussions. So we were assigned case studies, you
3 had to read a case study of a potential ethical issue that
4 might come up in medicine and then discuss how the different
5 approaches -- the different perspectives that people might
6 have.

7 So we would read the case study and then come into class.
8 There might be a little bit of lecture about that. And then
9 there was an open discussion where the students would give
10 their thoughts and perspective and just kind of build upon
11 each other's opinion to form this overall idea of what the
12 ethical issue might be.

13 Q. I think you testified a minute ago that it was like the
14 professor was sitting right next to your ear with the FM
15 system. Can you explain what that means?

16 A. It means that regardless of where they are, they can be
17 talking into that microphone and the signal is sent to my
18 cochlear implant as if it's right next to me; kind of like how
19 I understand a walkie-talkie to work.

20 Q. And could you understand what the professor was saying?

21 A. No, I could not.

22 Q. What was -- well, was the FM system effective for you in
23 lectures?

24 A. It was not effective.

25 Q. I'd like to refer you back to Exhibit 6. Do you still

1 have that in front of you, Mr. Argenyi?

2 A. I do now.

3 Q. Could you please read the last paragraph on the bottom of
4 that exhibit, the first page of that exhibit?

5 A. "Podcasting," is that what you're referring to?

6 Q. Yes, please.

7 A. "Podcasting is a way that [sic] students can review
8 lectures to gain a deeper understanding of the information, to
9 revisit specific material in preparation for upcoming lectures
10 and to solidify concepts prior to examinations. Mastery of
11 the basics can be enhanced to achieve an analysis/synthesis
12 level of knowledge. Students can use podcasts to clarify
13 discrepancies in their notes and resolve questions about their
14 recall of material presented in lecture. Podcasting may be
15 especially helpful to you because you mentioned, on several
16 occasions, the fact that you become fatigued when listening to
17 material. Having access to the podcasts will allow you to go
18 over material, taking breaks when you feel you need to, while
19 reinforcing the materials contained in the lectures."

20 Q. Was the podcasting especially helpful for you?

21 A. It was not.

22 Q. Why is that?

23 A. Because it's like trying to listen to the radio. I
24 can't.

25 Q. Was it captioned?

1 A. No.

2 Q. Did you ever try to listen to -- hear and understand one
3 of the podcasts?

4 A. I did. I tried -- the first few weeks I tried to listen
5 to the podcasts afterwards and I actually -- what I ended up
6 doing was sending them to some of my friends and having them
7 trying to type up a transcript for me.

8 Q. Were the podcasts an effective accommodation for you?

9 A. They were not.

10 Q. The letter, Exhibit 6, Plaintiff's Exhibit 6, mentions a
11 note-taking service. What is this?

12 A. The note-taking service; so the medical school
13 traditionally has a note service which is a program where
14 students can sign up, they pay a little bit of a fee to join
15 this program, and in this program you get a summary of the
16 notes afterwards.

17 What happens is that -- let's say there are ten classes
18 for one class. And ten people join the note service. They
19 each get assigned one class for those classes and that student
20 is responsible for attending class that day, listening,
21 condensing the notes into a summary, hitting the major points
22 and then sharing that with the rest of the students.

23 Q. And what was your experience with the note-taking
24 service?

25 A. My experience with the note service is that compared

1 to -- that it really was not helpful because it was a summary
2 of what had happened in class. It gave me the major ideas
3 that I needed to know which was what I was working with, I was
4 doing my best with that. But it did not give me the
5 information. It did not give me all of the information that
6 was taught in that class. It did not allow me to participate
7 in the classroom discussion. It did not allow me to hear the
8 questions the other students asked the professor.

9 Q. So, were the note-takers an effective accommodation for
10 you?

11 A. They were not.

12 Q. Turning to small groups, on the second page of
13 Plaintiff's Exhibit 6, how many students were in your small
14 group classes?

15 A. In my small groups, there were 15 people.

16 Q. And what was your experience in those small groups during
17 that first month of medical school?

18 A. My experience is that it was like a bouncing ball. We
19 had a couple of different small groups. We had a small group
20 associated with our molecular and cell biology class. It was
21 a class in which we -- it was a small group in which we would
22 be given a case study.

23 It was kind of a introduction in how to start developing
24 how a physician thinks. They would give us some symptoms,
25 some tests, and then we would go through the steps of figuring

1 out what that might be, how does that relate back to the
2 content that we learned in lectures. So that one was really
3 difficult because it was a lot of technical language.

4 The room was also darkened because there was a PowerPoint
5 that went with the case study showing enlarged photos of the
6 slides that were in it, such as a slide of the leg that has a
7 rash, so there would be a picture showing that.

8 And the conversation was rapid, there was a lot of back
9 and forth between the instructor and the student. The
10 instructor also in that case was -- had a very thick Indian
11 accent. In fact, when he lectured, the first few weeks I did
12 not go to class because I could not understand anything that
13 he was saying so I also had that difficulty in the small
14 group.

15 We had other small groups that were more casual, more
16 back and forth such as our interviewing group and the
17 experience was also difficult. It was that same bouncing ball
18 analogy that I've been using where I have to try to follow.

19 Q. Did you try the FM system for small groups?

20 A. I did.

21 Q. And what was your experience using the FM system in the
22 small group setting?

23 A. My experience was that it wasn't helpful.

24 Q. Why is that?

25 A. Because I couldn't really tell what people were saying if

1 I could not see them anyway.

2 Q. Turning to labs, Exhibit 6, the second page talks about
3 labs. How many people were in your laboratory classes?

4 A. In my lab class, in anatomy lab, all of the students were
5 there.

6 Q. So how many is there?

7 A. 126.

8 Q. And what was your experience in labs during that first
9 month of medical school?

10 A. My experience in the lab was that it was really tough.
11 So what happened is you would go to the anatomy lab that day.
12 The class was split up into groups of four to five people per
13 body. So we had an assigned body. We would go in, there
14 would be a video that had been recorded by the lab assistant
15 and the professor. This video would be shown on the screens
16 around the room. And it was -- there were demonstrations of
17 the structures that we were supposed to look for that day.

18 It would show us the dissecting techniques. It would
19 show us the structures to identify with a voiceover. This
20 video was not captioned so I could not understand it.

21 After that, I would turn to my classmates -- so I had
22 four other classmates that I worked with on the body. And I
23 would turn to them and ask for the information that was in the
24 video. They would give me a summary so I still wasn't sure
25 what we were really doing. I still didn't know all of the

1 things to look for during the dissection. And because of that
2 I let them take the lead on doing the work in that class while
3 I would just do what I could do.

4 So, for example, one of the labs, we had to start
5 dissecting the back. And a large part of that was just simply
6 removing the fat that the body had. So I was able to do those
7 things because I could see what I was doing but I didn't know
8 what to look for beyond that.

9 Also, the microphones that they had put in for the FM
10 system picked up all of the background noise. It picked up
11 the shadow of the people next to us and the body to our left.
12 It picked up the noise of the tools. It picked up the
13 footsteps. It picked up all of these background noises so the
14 FM system in that case actually confused me more.

15 Q. So you testified that it picked up all that noise. Why
16 couldn't you understand what it picked up?

17 A. Because when you have all of that noise coming into the
18 signal, it just becomes one big confusion of noise.

19 Q. So was the FM system an effective accommodation for you
20 in the lab setting?

21 A. It was not.

22 Q. During the beginning of medical school that first month,
23 how many hours a day did you try the FM system?

24 A. We had lectures for four hours a day, five days a week.
25 We had lab three days a week for several hours. We had small

1 groups on a variable schedule. So I would say I tried the FM
2 system about 100 hours.

3 Q. And how did you feel after using the FM system?

4 A. I felt very fatigued, very strained. I was so -- it's
5 like trying to listen -- it's like trying to understand
6 talking under water. I couldn't put it together -- even with
7 trying to lip-read, I couldn't always put it together. I went
8 home and I would just have to try to recover all of that
9 listening, all of that trying to focus all of my energy and
10 understanding.

11 Also, in the lecture halls, the FM system actually gave
12 me a headache because there was static that would come in,
13 especially if I turned my head, there would be static all of a
14 sudden so I would hear that instead of the voice. And
15 exposure of that would give me a headache through the span of
16 four hours.

17 Q. In your experience during that first month of medical
18 school, did you see the other medical students in the first
19 year were fatigued or stressed?

20 MR. MOORE: Objection, foundation.

21 THE COURT: Overruled. He may answer based on his
22 observations.

23 A. I saw that people were stressed out just from the new
24 environment, but I did not see anybody that was as strained as
25 I was.

1 BY MS. VARGAS:

2 Q. Do you think that trying the FM system more would have
3 helped?

4 A. No, because I simply don't have the ability to understand
5 speech that way.

6 Q. Did you tell Creighton about your experiences?

7 A. I did.

8 Q. I'm sorry, do you have Exhibit 9 in front of you? Maybe
9 not.

10 MS. VARGAS: May I approach, your Honor?

11 THE COURT: Yes, you may.

12 BY MS. VARGAS:

13 Q. Exhibit 9 has already been admitted into evidence.

14 Do you recognize this document?

15 A. I do recognize this.

16 Q. What is it?

17 A. This is an e-mail that I sent on September 1, 2009, to
18 Dr. Kavan.

19 Q. Could you please read the second paragraph of this
20 letter, this e-mail?

21 A. I said that, "The accommodations are inadequate as
22 evidenced by the level of stress and fatigue I am
23 experiencing, as well as the amount of information I am
24 missing. I am missing on average a decent chunk of the
25 lectures. Even when I am able to follow the lecturer, the

1 intensity of listening to the lecturer causes fatigue where I
2 am unable to function properly for the rest of the day,
3 significantly impacting my ability to study. I am also unable
4 to follow conversations effectively anytime classmates ask
5 questions or there is a full class discussion."

6 Q. And could you please read the third paragraph?

7 A. "I am relying on the Note Service which, while very
8 helpful, has been insufficient, and has me at minimum one day
9 behind my peers in my studying, as I have to wait for the
10 notes to come out the next day or even after a full weekend,
11 which is critical. This was especially noticeable when at the
12 last MDQ I missed questions because it covered material that
13 had not yet been covered by the Note Service and potentially
14 left out of the notes from earlier lectures. I am also
15 suffering in anatomy lab due to the high noise level. The FM
16 system only amplifies the general noise level, as well as
17 voices, essentially negating any potential value in
18 amplification. Finally the videos (Unnatural Causes) in
19 Ethics and the dissection videos in Anatomy are inaccessible
20 because they are not closed captioned, and I have no
21 interpreter to relay the information."

22 Q. And could you please read the fourth paragraph?

23 A. "In short, the accommodations currently in place do not
24 provide for meaningful participation nor independence as a
25 student and also put me at a significant disadvantage

1 academically."

2 Q. Now, the paragraph below that, the fifth paragraph, could
3 you read that, please?

4 A. "I also want to restate the assertion that [sic] I made
5 at the August 12th meeting I do not qualify as having a mild
6 hearing loss, but a severe-to-profound hearing loss.
7 Furthermore, as requested by Amy Bones, I am gathering further
8 medical documentation which will be submitted ASAP. Please
9 contact Dianne if you have questions."

10 Q. Who is Amy Bones?

11 A. Amy Bones is a lawyer for Creighton University at that
12 time.

13 Q. And how did you come to have interaction with Amy Bones?

14 A. I had interaction with Amy Bones when we scheduled a
15 meeting to discuss the accommodation and Amy Bones was present
16 at that meeting.

17 Q. And who else was present with you at that meeting?

18 A. Dr. Kavan was present, I was present, Dianne, my advocate
19 was present, Amy Bones was present and Wade Pearson from the
20 disability office at Creighton University was present.

21 Q. And what was the purpose of that meeting?

22 A. The purpose of that meeting was for me to express my
23 concerns I had about the accommodations and to show them who I
24 was, how I communicated, and what I would need in these
25 settings.

1 Q. And in that meeting, did Amy Bones tell you anything
2 about your status at medical school?

3 A. She said that I may not be qualified to be in medical
4 school.

5 Q. After that meeting -- what happened after that meeting?

6 A. After that meeting, I started school the next week.

7 Q. And was that when you used the FM system for the month
8 that we just talked about?

9 A. Right. That's when I tried the accommodations that we
10 had set up through the school.

11 Q. Okay. So, turning -- let me go back.

12 Plaintiff's Exhibit 9, this e-mail that you sent to
13 Dr. Kavan, did you receive any response from Dr. Kavan?

14 A. I did not receive a response quickly.

15 Q. Did you receive a response that week?

16 A. Not that week.

17 Q. The next week?

18 A. I think it was -- I think it was 15 days later.

19 Q. Did anyone else from the university respond to this
20 e-mail? Did Wade Pearson respond to that e-mail?

21 A. No.

22 MS. VARGAS: May I approach, your Honor?

23 THE COURT: Yes, you may.

24 MS. VARGAS: I'm showing the plaintiff what's been
25 marked as Plaintiff's Exhibit 10.

1 BY MS. VARGAS:

2 Q. Do you recognize this document, Mr. Argenyi?

3 A. I recognize this document.

4 Q. What is it?

5 A. It is an e-mail that I sent to Dr. Kavan as well as to
6 Wade Pearson from the disability office, to Dr. Zetterman, the
7 dean of the medical school, and John Schlegel, the president
8 of the university.

9 Q. Is this a true and accurate copy of the e-mail you sent?

10 A. Yes.

11 MS. VARGAS: Your Honor, at this point I would move
12 to have Plaintiff's Exhibit 10 admitted into evidence.

13 MR. MOORE: No objection.

14 THE COURT: Exhibit 10 is received.

15 MS. VARGAS: Thank you, your Honor.

16 BY MS. VARGAS:

17 Q. Why did you send this e-mail, Mr. Argenyi?

18 A. I had not received a response to my September 1st e-mail
19 and my mother had not received a response to the letter that
20 she had sent -- the letter and e-mail she had sent on
21 September 7th.

22 MS. VARGAS: May I approach the witness?

23 THE COURT: Yes, you may.

24 MS. VARGAS: I'm showing the witness what has been
25 marked as Plaintiff's Exhibit 11.

1 BY MS. VARGAS:

2 Q. Do you recognize this document?

3 Let me repeat the question. Do you recognize this
4 document?

5 A. Yes, I -- repeat -- yes, I recognize this document.

6 Q. And what is it?

7 A. It is an e-mail that I sent to Dr. Kavan on September 21,
8 2009.

9 Q. Is it a true and accurate copy of that e-mail?

10 A. Yes, it is.

11 MS. VARGAS: Your Honor, at this point I would move
12 to have Plaintiff's Exhibit 11 admitted into evidence.

13 THE COURT: My notes indicate it's already received.

14 MS. VARGAS: Oh, thank you. I'm sorry.

15 BY MS. VARGAS:

16 Q. Why did you send this e-mail?

17 A. I sent this e-mail because the response to the letter --
18 the response to the September 15th e-mail had been an e-mail
19 later that evening offering me another note-taking service.
20 So it did not address my concern about having equal
21 participation in the classroom. It did not address my
22 concerns about being able to hear other student questions. It
23 did not address my concern about getting all of the
24 information.

25 So, I sent another -- I sent this e-mail to again request

1 the accommodation that would be effective.

2 Q. So -- I got ahead of myself, let me step back a minute.

3 After you sent the letter that's been marked as Exhibit
4 10, did you receive a response from Creighton University?

5 A. I got a response indicating that they would offer me a
6 designated note-taker.

7 Q. And who sent you that response?

8 A. Dr. Kavan.

9 Q. And would a designated note-taker have provided effective
10 communication for you for medical school?

11 A. No.

12 Q. Why is that?

13 A. It's because again I still cannot participate in the
14 classes. I'm still getting somebody else's summary of the
15 information. I'm still getting -- I'm still not able to hear
16 the question and have that process of the question and answer
17 reinforce my own understanding of the material in the
18 classroom.

19 Q. Okay. And would you please read the first sentence of
20 your e-mail to us.

21 A. "It is my understanding that you and your attorney, Amy
22 Bones, have received the copy of the third medical document
23 from my otolaryngologist, Dr. Backous."

24 Q. How many letters did your otolaryngologist write to
25 Creighton University?

1 A. Altogether, four.

2 Q. Could you please read paragraph number one -- or the line
3 numbered one in Exhibit 11? Why don't you read the paragraph
4 beginning with "therefore".

5 A. Therefore, like in my letter of 4 -- of April 24, 2009, I
6 request the following accommodations to be in place
7 immediately: One, lectures: Real-time captioning.

8 Two, labs: Cued speech interpreter, if available;
9 otherwise, oral/possible ASL interpreter. Due to people
10 moving around, real-time captioning does not work. This
11 especially and expressly includes anatomy lab because of the
12 uncaptioned anatomy videos and the high noise level.

13 Three, small discussion groups: Since the group size is
14 quite large, I request either an interpreter or real-time
15 captioning. I would prefer real-time captioning for MCB small
16 groups due to the high intensity, but an interpreter is
17 probably better suited to Ethics and IPE small groups because
18 of the mobility.

19 Q. Was your request for auxiliary aids for the small group
20 discussions the same as your previous request?

21 A. It was not the same.

22 Q. Why was that?

23 A. Because the groups were larger and there was mobility.
24 And as I had stated in the previous requests, the FM system
25 may not be effective.

1 Q. Okay. And then how did Creighton respond? Did Creighton
2 respond to this e-mail?

3 A. No.

4 Q. Are you familiar with the Nebraska Commission on the Deaf
5 and Hard of Hearing?

6 A. My mother had found out about it and put me in contact
7 with them.

8 Q. What did you -- did you -- what was your communication
9 with them?

10 A. I was inquiring with them what kind of services were in
11 the area.

12 Q. And are you familiar with Nebraska Advocacy Services?

13 A. I am. That's where I had contacted Dianne.

14 Q. And why did you contact Nebraska Advocacy Services?

15 A. I wanted to review my legal rights. This was a new
16 situation and the accommodations were different than I had
17 used in the past so I just wanted to know what was -- what is
18 my -- what is my ability as a student in this.

19 Q. And after this e-mail to Dr. Kavan on September 21st
20 which you testified about a moment ago, what did you do next?

21 A. At that point, because I was not getting the information
22 in the classroom, I started to secure my own accommodations.

23 Q. And what accommodations did you secure for yourself?

24 A. I secured CART or real-time captioning for my lectures.
25 I got a oral interpreter with sign support for my small groups

1 and anatomy lab.

2 Q. And why did you choose CART for the lectures?

3 A. I chose CART because of the terminology. Like I have
4 explained before, even if I know the content in that material,
5 for me to understand it the first time around 100 percent is
6 -- is through reading.

7 Q. Were there assigned readings in advance of your classes
8 at Creighton University?

9 A. Yes.

10 Q. Did you do the homework that was required?

11 A. I did.

12 Q. All of it?

13 A. Yeah.

14 Q. How did you pay for the CART services that you secured
15 for yourself?

16 A. I secured a personal loan.

17 Q. And who did you borrow money from?

18 A. I borrowed from my parents.

19 Q. How did it feel borrowing money from your parents to pay
20 for your accommodations in medical school?

21 A. It was uncomfortable. I-- the idea was that -- when I
22 moved away and went to medical school, the idea was that I was
23 independently -- I was supposed to be independent for myself.
24 They were not assisting me with medical school in the first
25 place. All of the tuition and everything, I was taking out

1 through loans; anything I wanted on my own, I paid for myself.
2 So for me to have to go back and ask my parents for the loan
3 was -- they understood the situation but it was still -- you
4 know, I was 22 years old and I was trying to be an adult at
5 that point.

6 Q. How did you find CART services?

7 A. I contacted several people. I contacted the Nebraska
8 Commission for the Deaf and Hard of Hearing. I contacted
9 people in Iowa. When -- when I had grown up, I had used CART
10 there and I asked them for references. And, actually, my mom
11 called other universities and asked them whether they had used
12 CART providers and if they had, who were they.

13 Q. And --

14 MS. VARGAS: May I approach, your Honor?

15 THE COURT: Yes, you may.

16 MS. VARGAS: If I may, I'd like to show Plaintiff's
17 Exhibit 12 which has already been admitted into evidence.

18 THE COURT: You may.

19 BY MS. VARGAS:

20 Q. Do you recognize this document?

21 A. I recognize this document.

22 Q. What is it?

23 A. This document is the e-mail that I sent to Dr. Kavan on
24 September 24, 2009.

25 Q. And why did you send this e-mail?

1 A. I was letting Creighton University know that I had set up
2 my accommodations and that they could anticipate a CART
3 reporter in my lectures.

4 Q. Did you obtain any auxiliary aids for labs and small
5 groups?

6 A. Yes. I also let them know that I had obtained
7 interpreting for my labs and my small groups.

8 Q. Did Creighton University respond to your e-mail?

9 A. No.

10 Q. Did Dr. Kavan respond to your e-mail?

11 A. No.

12 Q. What was your experience using CART in the medical school
13 lectures like?

14 A. It was great. I had access to all of the information. I
15 didn't have to second-guess what I was understanding. I could
16 participate in all of the conversation. I could participate
17 in the small groups. I could test my own knowledge when other
18 students asked questions. I could ask questions and
19 comfortably understand the answer that I was going to get. I
20 didn't have to guess anymore and I had time to study.

21 Q. What was --

22 A. And I had time --

23 Q. What was-- sorry.

24 A. That's okay.

25 Q. What was your experience in labs and small groups using

1 interpreters?

2 A. So the experience was the same. Again, I was able to get
3 all of the information, 100 percent. I was able to
4 participate in the conversation. I didn't have to focus in
5 trying to figure out who was talking and following that
6 bouncing ball. I could use the interpreter to help me out.

7 In the anatomy lab, I could have the interpreter
8 communicate the video to me. And then I could have -- and
9 then if we moved around, the interpreter was able to follow me
10 around.

11 Q. Why did you select different auxiliary aids and services
12 for lectures versus small groups and labs?

13 A. So, I chose CART for lectures because of the technical
14 information. Like I've explained, an interpreter is not
15 effective in that situation because reading is the way that I
16 understand the lecture content. And -- however, when it comes
17 to the lab and the small groups, it's more conversational,
18 it's a slower pace. It's also signs that are more basic so I
19 can understand the signs that are used to clarify the oral
20 interpreter. And it's mobile so that interpreter is able to
21 follow around.

22 Q. And what was your experience through the remainder of
23 that first year of medical school like in the classrooms and
24 labs and small groups?

25 A. It was great. I didn't have any problems getting

1 information for the rest of the year because it was effective.
2 I was able to participate. I was able to build relationships
3 with my classmates. I was able to learn the information that
4 I needed. I was ready for second year when it came.

5 Q. Have you seen the letter that Dr. Thedinger wrote after
6 examining you?

7 A. I have seen it.

8 Q. How did it make you feel when you read that letter?

9 A. It made me feel like -- like I wasn't wrong about how I
10 perceived the world. It confirmed that, yes, an FM system
11 really is just not the way for me to understand speech, that I
12 can't understand speech. It was a letter that said what my
13 daily experience was.

14 MS. VARGAS: May I approach and show the witness
15 Plaintiff's Exhibit 36?

16 THE COURT: Yes, you may.

17 MR. MOORE: No, this isn't in.

18 BY MS. VARGAS:

19 Q. Do you recognize this document?

20 A. Yes, I recognize this document.

21 Q. What is it?

22 A. This document is the schedule of accommodations that I
23 set up for myself for the first year.

24 Q. Do you know who created this document?

25 A. My mother had started it and then I took over keeping up

1 the rest.

2 Q. And who was responsible for maintaining this document?

3 A. One second. I was responsible for maintaining it.

4 Q. And if you could please look at it carefully and let me
5 know if it's a true and accurate representation of those
6 records that you maintained?

7 A. It appears accurate to me.

8 MS. VARGAS: Your Honor, at this point I would move
9 to have Plaintiff's Exhibit 36 admitted into evidence.

10 MR. MOORE: We have no objection.

11 THE COURT: Exhibit 36 is received.

12 MS. VARGAS: Thank you, your Honor.

13 MR. MOORE: May I have a minute?

14 (Off-the-record discussion had.)

15 BY MS. VARGAS:

16 Q. Tell us about Plaintiff's Exhibit 36. What is this?

17 A. So, this is the schedule of accommodations. So if you
18 look at the top, that is the time of day. The medical school
19 was broken up into 50-minute lectures for the most part or
20 one- to two-hour parts for labs and groups.

21 On the right and the left side, the column is the day of
22 the week. So it was broken up into weeks. At the beginning,
23 every box has the name of the class, the number of the
24 lecture, and the type of accommodation that I was
25 requesting -- or that I set up for myself.

1 So, for example, for all of the green, I requested CART,
2 and the green meant I had coverage by a certain provider. You
3 can look at other places that are blue or yellow, that means
4 it was a specific interpreter that had been assigned to that
5 class.

6 Q. And how did you go about arranging these services?

7 A. So my mother made the initial contact and then she gave
8 me the contact information. She focused on getting as much as
9 she could for the first two weeks because scheduling last
10 minute I wasn't able to get full coverage, people had other
11 commitments or other jobs and -- especially because the
12 college -- the colleges had already started.

13 So typically interpreters cover a full class for the
14 semester, they don't cover just a couple of lectures, so they
15 had already made commitments to other universities or other
16 students so we kind of had to figure out whom we could put
17 where.

18 As the -- after the first few weeks, I had all of the
19 contact information. And so there were several e-mails back
20 and forth asking about their availability and their -- their
21 availability to do all of the -- to do whatever I had asked
22 them, if they were available for it.

23 Q. Do you recall approximately what tuition you paid to
24 attend Creighton University for your first year?

25 A. I paid 45,000 for direct -- for tuition itself.

1 Q. And how much did you pay in tuition plus auxiliary aids?

2 A. I paid 51,000 for auxiliary aids so, 45 plus 51. I can't
3 do the math in my head right now.

4 Q. Me either. How did you feel about paying that amount of
5 money to access the medical education you paid for?

6 A. I felt like it was tough but it was worth it because I
7 was there to be a physician. I needed to be able to attend
8 medical school; and if I couldn't do it without getting
9 accommodations, then I needed to be able to do that.

10 Q. Let's turn now to your second year of medical school.
11 What was your schedule for the start of the second year of
12 medical school like?

13 A. So, my schedule for the second year of medical school was
14 relatively similar. We had four hours of lecture from eight
15 to noon five days a week typically. Then we'd have small
16 groups or some labs in the afternoon.

17 The new part of second year is that the -- every two
18 weeks we also had a clinic. This was our first introduction
19 to actually working with patients. Every two weeks on
20 Thursday afternoon I was required to go to an outpatient
21 family medicine clinic and work with a Creighton faculty
22 member who also saw patients.

23 Q. Did you request auxiliary aids and services for the
24 second year of medical school?

25 A. I did.

1 Q. What auxiliary aids and services did you request?

2 A. So in a similar fashion, I requested CART for my
3 lectures; I requested an interpreter for the advanced clinical
4 skills course in which we learned how to conduct patient
5 exams; I requested an interpreter for the clinic. And for the
6 small groups, it depended on which class it was related to.

7 Q. And did Creighton respond to your request?

8 A. They did.

9 Q. What did Creighton -- did Creighton offer you the FM
10 system for the second year?

11 A. No, they did not.

12 Q. What did Creighton University respond -- how did
13 Creighton University respond to your request for CART in the
14 lectures during the second year?

15 A. Creighton University, the day -- the week before classes
16 started, they informed me that they would provide an oral
17 interpreter for classes -- for the lectures; they would
18 provide -- for the small groups, for the labs and for the
19 clinic, I would not be allowed to have an interpreter.

20 Q. Did they offer you the opportunity of sitting next to a
21 professor as an accommodation?

22 A. They said that I could sit next to a professor. That way
23 I would be able to see everything he could say.

24 Q. Was sitting next to a professor a benefit for you?

25 A. No, it's not, because when I sit next to a professor, it

1 means that I have to turn toward him like this (indicating)
2 and lip-reading from the side is tougher than lip-reading from
3 the front. It also means that I can't see the rest of my
4 classmates. Like right now I can't see any of the lawyers, I
5 can only see you.

6 Q. So you testified that Creighton offered interpreters for
7 lectures.

8 A. Yes.

9 Q. Was that an effective way for you to communicate in
10 lectures?

11 A. No, it was not, because again for me to access the
12 information in that -- in those lectures was a lot of
13 technical information, I need to be able to read the words
14 because that way I actually know what I'm hearing in the
15 lectures. With an interpreter I'm still guessing. There's a
16 lot of advanced terminology in those classes I don't know the
17 sign for that. So even if I could lip-read the person, if I
18 don't catch what they say, I can't use the sign language to
19 clarify what was said on their lips.

20 So there are words like -- there are words that start
21 with the same thing a lot of times. So, for example, we could
22 be talking -- we could have an infectious disease class, and
23 we could be talking about differing causes of a disease, and
24 they could be from -- we could be talking about a different
25 germ, and they all have similar names, and I can't catch what

1 they are. And because it's so fast paced, I don't have a way
2 to ask the interpreter to clarify again.

3 THE COURT: It is now noon. Let's go ahead and take
4 our midday break.

5 Please reconvene in the jury room by 1:15 and we'll start
6 again at 1:15.

7 We're in recess.

8 (Jury out and recess taken at 12 o'clock noon.)

9 (At 1:17 p.m. on August 23, 2013, with counsel for the
10 parties, the plaintiff, and the defendant's representative
11 present, and the jury NOT present, the following proceedings
12 were had:)

13 MICHAEL ARGENYI, PREVIOUSLY SWORN, RESUMED THE STAND

14 THE COURT: Please be seated.

15 I will mention that we will need to stop by about 4:40
16 today. I'm not sure just how you anticipate that the rest of
17 the day will go, but I'm just making you aware of that.

18 Anything else we need to talk about?

19 MS. VARGAS: No, your Honor.

20 MR. MOORE: Nothing from the defendant.

21 THE COURT: Please bring in the jury.

22 (Jury in at 1:19 p.m.)

23 THE COURT: Please be seated.

24 Ms. Vargas, you may continue with your direct
25 examination.

1 MS. VARGAS: Thank you, your Honor.

2 DIRECT EXAMINATION (Cont'd.)

3 BY MS. VARGAS:

4 Q. Mr. Argenyi, I'd like to go back for a moment to
5 Plaintiff's Exhibit 36. Do you have that in front of you
6 still?

7 A. The schedule?

8 Q. Yes.

9 A. Yes.

10 Q. Could you please turn to the page that's dated 3 --
11 begins 3-22 on the left-hand side to 4-2; March 22nd through
12 April 2nd.

13 Have you found it?

14 A. Yes.

15 Q. Can you tell me what auxiliary aids and services you
16 requested on 3-22 from 10 to 11:50?

17 A. 3-22 there was a quiz so I did not request accommodation
18 for that.

19 Q. Oh, okay. So we were talking about your second year of
20 medical school and what auxiliary aids and services did you
21 set up for lectures, laboratories and small groups the second
22 year of medical school?

23 A. I set up CART for my lectures again. I set up an oral
24 sign-supported interpreter for my clinic, and I set up an oral
25 sign-supported interpreter for my advanced clinical skills

1 class. I set up an oral sign interpreter for some of the
2 small groups and CART for some of the small groups, depending
3 on how technical it was.

4 Q. Can you explain a little bit more about why you set up
5 different accommodations in that second year for different
6 settings?

7 A. When it came to the clinic, what we were supposed to be
8 doing in that clinic is setting up a foundation for some of
9 our basic skills in patient assessment. So we would go into
10 patient rooms. At the beginning it was observation. And then
11 over the course of the year, I was told that if we were
12 comfortable getting a patient history and doing a physical
13 exam, I would be prepared for third year.

14 So, in that situation, it's conversational, it's one --
15 it's with a patient. So the questions are on their level.
16 I'm asking about what they feel, what have they experienced,
17 what their history is. In that situation, the context --
18 there's a lot of context and there's also -- when I use a oral
19 sign-supported interpreter, even though I may not know all of
20 the signs, I know the ones that are likely to be used in that
21 setting.

22 Furthermore, it's mobile and there's often another person
23 in the room. For example, if I would go in at the beginning
24 of the year, my attending doctor was also with me because I
25 was observing. So it was a good way for me to understand the

1 conversation that was going on in that situation.

2 And then the interpreter could follow me in and out of
3 the room.

4 When it came to the lectures --

5 Q. What was --

6 A. -- it was still very technical and --

7 MR. MOORE: Objection, narrative.

8 BY MS. VARGAS:

9 Q. Let's -- let's --

10 THE COURT: We'll stop at this point and we'll have a
11 new question.

12 BY MS. VARGAS:

13 Q. Let's go back a little bit.

14 Can you tell me about your first day of the second year
15 of medical school at Creighton University?

16 A. Okay. So I was in class and I had a CART reporter with
17 me as I had scheduled. The first lecture at eight o'clock was
18 orientation of second year to medical school. So it was an
19 overview of the curriculum, what our responsibilities would be
20 for that year, what our goals should be for the year. And
21 then the rest of the morning were three more -- two or three
22 more lectures on infectious diseases, first class of third
23 year.

24 Q. And --

25 A. There were a couple faculty members in the front of the

1 room when I was there at eight o'clock. They were talking
2 back and forth to each other but nobody approached me yet.

3 Then at some point Wade Pearson came to me and said that
4 they had acquired an interpreter and I said, "Thank you, but I
5 have CART here which is what I need for this class."

6 So he said that was okay and walked away. There was no
7 interpreter at the eight o'clock lecture.

8 Q. And then what happened next?

9 A. So our lectures tend to be 50 minutes so we have ten
10 minutes of a break before the next lecture. So that ended
11 around 8:50. And then all of a sudden somebody walked up to
12 me. That person was Dr. Hansen. I was turned around, talking
13 to other people and he started talking into my ear.

14 I couldn't understand him so I turned and I asked him to
15 repeat himself and I presume that he repeated himself. I
16 didn't understand everything. But he said something about the
17 first row and very hurriedly walked away before I could ask
18 him to repeat again and understand what he was saying.

19 Q. Who is Dr. Hansen?

20 A. Dr. Hansen was -- I forgot his official title, but he was
21 the person who managed the clinical component of the second
22 year.

23 Q. Okay. So he worked for Creighton University?

24 A. Yes.

25 Q. And how many people were present when he approached you?

1 A. Well, I was in the classroom so my classmates were
2 around. The classmates that I was sitting with were also
3 there to see it.

4 Q. How many of your classmates do you think were present?

5 A. Because of the orientation, it was mandatory, so all of
6 the people that were still enrolled in the program at that
7 point were in the building and most of them were in the room.

8 Q. Do you remember if your professor was present?

9 A. I don't remember that.

10 Q. How did it feel when that interaction happened in front
11 of 120-something of your peers?

12 A. It was -- at first I was really confused at what had
13 happened. I didn't know what was going on right away. I
14 asked my court reporter -- she was right next to me so I asked
15 her what had happened, and I was upset that I didn't
16 understand him and that he had not -- the way that he came up
17 to me, he was not very friendly, he just started talking in my
18 ear and then walked away. And at first -- it was not
19 respectful of the way that I communicate.

20 And when I -- when my CART reporter explained that what I
21 have been told was that I needed to move to the first row, I
22 felt humiliated because that's not a way other students in the
23 past were treated. That's not something they're expected to
24 do. I'm not asking to be treated differently, just to have
25 the information that I need. And to be asked to move to the

1 front row, that's isolating me, that's -- that's...

2 Q. Why was that isolating?

3 A. Because the other students, they can sit where they want
4 to sit; they can sit where it's comfortable, they can sit with
5 people they want to sit with. And when they asked me to sit
6 in the front row, I couldn't do that. Where I was was
7 comfortable for me.

8 When I was -- if I would move to the front row, I would
9 have to crane my neck to see the PowerPoint because it's up
10 there (indicating). And I knew that I had found a comfortable
11 place for me. I was also with a friend I wanted to be and if
12 I was moved to the front row, then I was being singled out.

13 Q. Were there any other students sitting in the front rows
14 that day?

15 A. There were a few students who were in the front row next
16 to the -- near the podium that -- if that's where they chose
17 to sit. But over by the interpreter, no.

18 Q. So where did you sit?

19 A. I was sitting on the left side with a group of friends
20 that were kind of a few rows up, maybe five rows up where I
21 had a good view of the projector, the PowerPoint and the
22 screen and it was comfortable for me.

23 Q. Can you explain what you mean by a good view of the
24 PowerPoint and the screen?

25 A. So like it was a place where I could see the PowerPoint

1 as well as the computer screen where I was reading the
2 transcript and I could quickly scan between the two and match
3 up the information with the PowerPoint slide.

4 If I had been sitting in the front row, the transcript
5 would have been here and the PowerPoint up here so the
6 scanning time would have been longer, and it would have
7 been -- it's just -- it's not as seamless. The interpreter as
8 well, had I been using an interpreter, would have been
9 standing there away from the screen where I also wouldn't have
10 her in the same field of vision.

11 Q. So then what happened next?

12 A. So at that point, there was an interpreter present for
13 the nine o'clock lecture. And because I was -- I felt really
14 embarrassed about what had happened, I didn't move to the
15 first row, I was where I was with the CART reporter and with
16 my friends where I was comfortable. So the interpreter was by
17 the projectors -- by the PowerPoint screen and that's how the
18 nine o'clock lecture started is there was both an interpreter
19 and a CART provider.

20 Q. Did you look at the interpreter that morning?

21 A. I did. It was our first lecture for the infectious
22 disease class and she was -- it wasn't effective. I would try
23 for a bit and then watch the CART screen again because I
24 needed to catch what I had just missed while I was trying to
25 watch her.

1 She was doing a lot of finger spelling for terminology
2 that I couldn't -- she didn't -- it was too fast to read. And
3 having her fall behind and behind; she would try to initialize
4 and then I couldn't lip-read the words. Initializing is when
5 you finger spell the first few letters so you have an idea
6 what the rest of the word might be.

7 Some of the signs I just didn't know because they were
8 beyond the vocabulary that I had at that point so I couldn't
9 follow, I couldn't contextualize what I was trying to
10 lip-read. Even in the brief intervals that I tried, I'd have
11 to go back to the CART screen before I lost that information.

12 I tried a few times. And like the physics class, it just
13 wasn't effective.

14 Q. Which physics class was that?

15 A. The one that I took in undergraduate when I had a cued
16 speech interpreter.

17 Q. If you had moved closer to the front row, would you have
18 been able to understand the lecture with the interpreter?

19 A. No, because I still didn't know the sign.

20 Q. What happened after class?

21 A. After class I went to say hello to the interpreter. I
22 had worked with her previously so I asked -- so I went down to
23 say hello. And she asked if I wanted her to leave and I said,
24 "That's really up to you. I set up CART." And, I said, "You
25 know, I'm sorry that this happened. I'm not sure what's going

1 on." And then I left it at that and I went back to sit down.
2 People were staring at me because during that whole hour
3 people were looking at the interpreter and at me because they
4 could see that both of them were going on and my classmates
5 didn't know what to think.

6 Q. So what happened in the next lecture class that you had?

7 A. In the next lecture class, I had CART for my ten o'clock
8 lecture and my eleven o'clock lecture.

9 Q. And who paid for the CART that you had?

10 A. I did.

11 Q. Can you tell me about the communications that happened in
12 the labs and small groups in the second year of medical
13 school?

14 A. So for the labs, there were different labs for that year.
15 There were a couple of labs that were computer-based where we
16 would go to the computer lab and they would go through the
17 different cell structures. A lot of -- the word just escaped
18 my head. When you look at the really small structures in the
19 body and you try to see what's a normal state and what's a
20 diseased state. So we had several computer-based labs where
21 we learned this new material.

22 And we had other labs such as -- one example we had,
23 during our hematology/oncology class, we had a phlebotomy lab
24 where we watched a video on how to do blood draws and
25 practiced on each other.

1 During the small groups, we had -- small groups, we had
2 one that was connected with the coursework that we were doing.
3 That year our lectures were in block classes where we had one
4 class for a couple of weeks that focused on a part of the
5 body. So, for example, we started with infectious diseases
6 and what -- some of the next classes we did were hematology,
7 oncology, the cardiovascular, respiratory system.

8 So for each of those, we had some, like, small groups
9 where we needed to base -- to reinforce the material that was
10 in a small group discussion style. And we also had a case --
11 an advanced clinical skills class with an associated lab.

12 So, for example, we would have a lecture on how to do an
13 abdominal exam, and we would have a lab following that lecture
14 where we would practice on each other the technique included
15 in doing an abdominal exam.

16 Q. What was your experience using interpreters in some of
17 the labs and small groups in second year?

18 A. My experience in using the interpreters is that it
19 allowed me to have access to all of the information that was
20 going on and it allowed me to be able to move around the room
21 so I could learn the material that I was going to be using in
22 the clinics.

23 Q. Why didn't those same interpreters provide access in the
24 lecture setting?

25 A. Because in the lecture setting, the language was more

1 technical. The best way to get all that information was by
2 reading it. If I couldn't understand the sign, then that just
3 wasn't going to be effective.

4 Q. Okay. What -- you mentioned earlier there was a clinical
5 element in the second year of medical school for the first
6 time. Did you request auxiliary aids and services for the
7 clinical element?

8 A. I did.

9 Q. What did you request?

10 A. My request was for an oral sign-supported interpreter.

11 Q. What was Creighton's response?

12 A. Creighton's response was that I was not allowed to have
13 an interpreter even if I paid for it myself.

14 Q. Did Creighton tell you anything else about the clinic --
15 your participation in the clinic in the second year?

16 A. Yes. I explained to Creighton that I know that it's a
17 pass/fail clinic and that there's not a grade associated and
18 that's not why I was worried about it. I was told that -- In
19 the beginning of the first year, we had to get this blue book
20 that's called -- I don't remember the title of it but it's
21 about interviewing patients.

22 And in the introduction to that interviewing patient
23 book, it says about how the majority of case -- the majority
24 of patient diagnoses can be made on a complete history.

25 MR. MOORE: Objection, Your Honor, hearsay.

1 A. So you don't even have to do an examination many times.

2 MR. MOORE: Objection, hearsay.

3 THE COURT: The jury will accept this information as
4 the basis for the reason the plaintiff did what he did, not
5 for the truth of any information contained in the blue book.
6 Go ahead.

7 A. So, like I said, in this introduction it says that the
8 majority of patient diagnoses can be made with a very accurate
9 and complete patient history, meaning that you don't even need
10 to go on to the examination. The examination basically
11 affirmed what you've already figured out through the process
12 of interviewing the patient.

13 And I explained to Creighton that I need all of that
14 information in the clinical phase so that I can learn how to
15 make that diagnosis, so I can make a complete diagnosis, so I
16 can present that to my attending so -- because I don't want to
17 be the one -- I don't want the one word that I'm missing or
18 the two sentences that I'm missing to lead me down the wrong
19 path when I'm working with a patient.

20 BY MS. VARGAS:

21 Q. And did --

22 A. And so --

23 Q. Did Creighton tell you anything about your -- how your
24 performance would be assessed in the second year medical
25 school clinic?

1 A. I was informed -- when I explained that, I was informed
2 that I only had to show up to pass.

3 Q. Did you want to only show up to pass?

4 A. Absolutely not. This is the foundation that they have
5 for all M2 students to build the skills they're going to need
6 for third and fourth year. Like I said, I was informed that
7 if I could get through that year and be very comfortable in
8 getting the patient history and applying the examination
9 skills that I had learned, then I would be ready for third
10 year. And if I'm not going to have access to all of the
11 information and all of the modeling that happened in that
12 clinic, then I'm not going to be as prepared.

13 Q. So what was your experience on the first day of clinic in
14 the second year?

15 A. On the first day of clinic, Dr. Hansen wanted to
16 introduce me to my attending. So the attending is the doctor
17 that oversees what I do in the clinic. The attending was
18 named Dr. Townley. I got to the clinic with Dr. Hansen. He
19 introduced me to Dr. Townley. We talked a little bit, you
20 know, set up the introductions. We talked about the fact that
21 I have a hearing loss. And Dr. Townley asked if I needed
22 interpreters or if one would be coming for me.

23 Q. What did you respond?

24 A. And Dr. Hansen said that Creighton had decided that there
25 would not be an interpreter.

1 Q. What were your responsibilities in the clinic?

2 A. My responsibilities in the clinic were to enter the
3 patient room; things -- these skills were built upon each
4 other through the year. So, in the beginning we were
5 responsible just to observe, to learn from the modeling of the
6 physician to see how the process happened and then imitate it.

7 Moving from observation, we started with patient history.
8 We would go into the room, start with the patient, ask about
9 their family background, the history of whatever -- the reason
10 that they came in, ask relevant history, continue that.

11 Through the year as we learned skills on how to do the
12 examination, if we had a feeling of why that patient was there
13 and what kind of examination would be appropriate, we were
14 encouraged to try to do an examination of the patient as well.

15 Q. Typically during the clinic how often was Dr. Townley
16 present while you were there, with you?

17 A. At the beginning because it was observation, she was
18 there for all of it while I watched her.

19 Pretty quickly she encouraged me to do interviews and
20 examinations independently. So starting with the third
21 clinic, I would say she was there very rarely.

22 Q. And during those first few clinics when you were mostly
23 observing, can you describe how your communication was?

24 A. It was difficult. The patient would be on the
25 examination table or on the chair which was up against the

1 wall and then Dr. Townley would be talking with the patient.

2 There was also often a family member. It was -- probably
3 half the time there was a family member there as well.

4 And so she would be talking with these people, trying to
5 focus on the conversation, get the details of what was going
6 on while I'd be standing there observing, trying to follow
7 this bouncing ball.

8 So I would be missing how the -- the basis of how to
9 imitate her style of approaching the patient. I would be
10 missing details that the patient would be telling her. And
11 there was not really -- even if I could reposition myself, I
12 still wouldn't be able to see one or the other person because
13 the rooms were really small and the patient was typically up
14 against the wall.

15 Q. Did you ever stop the interview and ask for
16 clarification?

17 A. I tried a few times but in real -- you know, interrupting
18 that patient/physician interaction right there, that means I'm
19 taking away from what's naturally happening. And if I
20 interrupt constantly because I really don't understand what's
21 going on, then it's not going to proceed the way it actually
22 happens.

23 Q. Did you ask Dr. Townley -- or tell Dr. Townley about the
24 problems you were having?

25 A. I did. We had a meeting early in the fall.

1 Q. And what happened at that meeting?

2 A. At that meeting I asked her to meet with me on, I think,
3 September 1st or September 2nd. And I brought an interpreter
4 with me so we had a conversation during that. I explained
5 that the clinic on the previous Thursday was really tough for
6 me and that I was missing a lot of information, and it was
7 hard for me to observe because I just was -- I was getting a
8 general idea but not a lot of the details.

9 So, she said that she understood my concern but she said
10 that she didn't have any decision-making capacity so she
11 couldn't change that for me. She said she would try to repeat
12 things for me but she's also not an interpreter, and she had
13 to be able to -- that she's just not an interpreter and she
14 can't be in that role all the time.

15 Q. Did you expect her to be in that role?

16 A. No. She also identified that there was a patient the
17 previous clinic who had been speaking in Spanish and I hadn't
18 picked up on that. I thought I was missing everything. I
19 couldn't identify it was in Spanish.

20 MS. VARGAS: May I approach, your Honor --

21 THE COURT: Yes, you may.

22 MS. VARGAS: -- to show him Plaintiff's Exhibit 22?

23 BY MS. VARGAS:

24 Q. Do you recognize this document?

25 A. Yes, I recognize this document.

1 Q. What is it?

2 A. It's an e-mail that I sent to Dr. Hansen on
3 September 21st, 2010.

4 Q. Can you look at it carefully and let me know if it's a
5 true and accurate copy of the e-mail that you sent?

6 A. Yes, it is.

7 MS. VARGAS: At this point, your Honor, I'd like to
8 move to have Exhibit 22 into evidence.

9 MR. MOORE: No objection.

10 THE COURT: Exhibit 22 is received.

11 BY MS. VARGAS:

12 Q. Could you please read aloud what this exhibit says
13 starting with "Dear Dr. Hansen"?

14 A. "Dear Dr. Hansen: With my third clinic this coming
15 Thursday on September 23rd and in advance of another meeting
16 with you, I wanted to renew my ongoing concerns about
17 communications in the clinic. I will be in touch with Monica
18 Martin after the quiz for scheduling the meeting, and I will
19 also review my schedule for a good time to come in and check
20 the closed-captioning.

21 "As I explained previously, I am struggling with
22 communication in clinics. At clinic on August 26, Dr. Townley
23 inquired whether an interpreter was coming to assist in
24 communication. You asserted that was not possible. I met
25 with patients with Dr. Townley and found I could not

1 understand all of what patients and others at the clinic said.
2 With some patients, I understood very little of what was said.
3 I know that you said I only had to show up to pass, but I want
4 to learn how to be a doctor and I think it is important to
5 understand what the patients are saying to me.

6 "This past clinic on September 8th, I was asked to
7 interview patients independently and collect the chief
8 complaint, past medical history, and attempt a review of
9 systems. Without an interpreter, I had no way to clarify
10 misunderstandings. With the three patients I interviewed, the
11 interview was stressful both for the patient, with constant
12 repeating of information, and for me with losing the flow of
13 the interview and being uncertain whether I was accurately
14 understanding all of the information provided by the patient.
15 As an example of significant chunks I am missing, despite two
16 repeats, I still did not understand the work-related injury of
17 one patient this past clinic visit.

18 "I know that Creighton is not willing to provide an
19 interpreter in the clinic. Until that issue is resolved, I
20 would renew my request that I be permitted to pay for my own
21 interpreter so that I can communicate effectively with the
22 patient. Would you please reconsider and allow me to pay for
23 my own interpreter in the interests of patient safety and so
24 that I might learn the lessons of the clinic" --

25 MS. VARGAS: Your Honor, could we wait until counsel

1 is done with their conversation?

2 THE COURT: I think that they're done.

3 BY MS. VARGAS:

4 Q. I'm sorry. You can continue.

5 A. "Would you please reconsider and allow me to pay for my
6 own interpreter in the interest of patient safety and so that
7 I might learn the lessons of the clinical program?

8 "The fact is some people are easier to lip-read than
9 others. For example, there is a distinct difference, facial
10 attributes notwithstanding *[sic]*, between a composed patient
11 who is very easy to lip-read and one who fidgets and becomes
12 emotional. In those situations my understanding can drop
13 dramatically. Situations where there is an additional person
14 involved in the communication, such as where a family member
15 participates, are also usually more difficult. I average, by
16 my own estimate, around 60 to 70 percent confident
17 understanding of patients but with a very wide range, given
18 some of these factors I have managed to describe. Also, with
19 the constant background noise in the hall, I do not always
20 catch conversations about patients or other clinical concerns.
21 Again, while I understand that Creighton has said it will not
22 fail me if I show up, my primary concern is not in my grade
23 but in providing a positive experience for my patients and in
24 learning what clinic is supposed to teach me. I have also
25 been unable to understand overhead pages and PA announcements

1 or the telephone.

2 "I am struggling with communication, a struggle that
3 could be entirely alleviated by the use of an interpreter. I
4 know there are deaf doctors all over the United States who
5 have used interpreters in medical schools and clinics.
6 Similarly, hearing doctors routinely use sign language
7 interpreters to communicate with deaf patients. As I have
8 explained previously, I am not asking for an interpreter to
9 mediate clinical judgment. In other words, I am not asking
10 for an interpreter to make decisions for me. I am asking that
11 I be permitted to use an interpreter so that I can understand
12 my patients and so that I can learn how to be a doctor. I
13 would not be asking if I didn't need accommodation.

14 "I met with Dr. Townley on September 1st, 2010, to share
15 my concerns about the communication difficulties and see if we
16 could identify any ways to improve communications without an
17 interpreter. Dr. Townley is not an interpreter and I cannot
18 expect her to function as one for me.

19 "Would you reconsider the decision to prohibit the use of
20 interpreters in the clinical setting? Could you explain why I
21 cannot pay for an interpreter myself?

22 "I appreciate being able to voice my concerns and I will
23 of course continue attending my longitudinal clinic and
24 working with the patients to the best of my ability. I am
25 concerned about having the ability to complete my tasks

1 appropriately, I am concerned about not being able to
2 communicate with patients and others without accommodation,
3 and I wanted to keep this discussion going. While I hope the
4 pediatric clinic possibility occurs, I wanted to again state
5 as I said in our September 2nd meeting a pediatric clinic
6 would also present different challenges in communication. I
7 look forward to your response and am open to more suggestions
8 as well."

9 Q. Could you explain what you mean about the pediatric
10 clinic?

11 A. In the pediatric clinic, you have also the added
12 difficulty of more groups, more people in the clinic room.
13 For example, you might have both parents, you might have a kid
14 who's talking that I can't quite understand yet because he
15 doesn't have the formed way of talking yet or he might babble
16 or he may not know how to talk with a deaf person, to face me.
17 Even if I'm doing very basic questions with the kids, I may
18 not get their answers so there's a lot more interactions going
19 on there.

20 Q. Can you explain, were you doing one clinic or two
21 clinics?

22 A. I was doing -- I had not started the second clinic at
23 that point, but Dr. Hansen recommended as a way to modify the
24 clinic for me and try to make it more specific to try a
25 different clinic. And I had explained that it would have its

1 own communication problems but he wanted me to try a second
2 clinic, to rotate every two weeks between the pediatrics
3 clinic and the outpatient clinic with Dr. Townley.

4 Q. Did you ask for that opportunity?

5 A. I did not ask for that.

6 Q. And did that opportunity in any way address your
7 communication concerns in the clinic?

8 A. It did not.

9 MS. VARGAS: If I may approach the witness --

10 THE COURT: You may.

11 MS. VARGAS: -- and show what's been marked as
12 Plaintiff's Exhibit 23.

13 BY MS. VARGAS:

14 Q. Do you recognize this document?

15 A. I do.

16 Q. What is it?

17 A. It is an e-mail that I sent to Dr. Hansen.

18 Q. And could you look at it and let me know if this is a
19 true and correct copy of the e-mail that you sent?

20 A. It is.

21 MS. VARGAS: At this point I would move to have it
22 admitted into evidence as Plaintiff's Exhibit 23.

23 MR. MOORE: No objection.

24 THE COURT: Exhibit 23 is received.

25 BY MS. VARGAS:

1 Q. And could you please read Exhibit 23?

2 A. "Dear Dr. Hansen, I wanted to touch base again. I
3 scheduled a meeting next week with Monica Martin. I
4 understand the meeting is later this month than you probably
5 intended but I had many commitments with Cardiovascular this
6 week. I look forward to reviewing the closed-captioning as
7 well at that time if possible. I had my fourth clinic today
8 and I am feeling very stressed out and exhausted by the clinic
9 situation. I am still struggling with communication. Let me
10 describe what it was like today as I visited with three
11 patients:

12 "Patient one: When it was one-on-one, I understood 70
13 percent despite constant repeating and summary. When
14 Dr. Townley performed her attending evaluation, it dropped to
15 40 percent and during the procedure (Pap smear) it was
16 virtually zero.

17 "Patient two: I understood 85 percent which dropped to
18 about 60 percent when Dr. Townley came in and I had to follow
19 both individuals.

20 "Patient three: I talked with the parents of a medically
21 complex child, also present, and a very frustrated father
22 proceeded to give me a ten-minute lecture on the role of a
23 physician and their lack of availability. I understood
24 probably 70 percent before I was interrupted by medical staff.
25 I then came back in later with Dr. Townley and followed about

1 half between three people.

2 "I am also missing information when the patient is not
3 directly available to lip-read, such as when they are behind a
4 door or curtain (before I enter the room) or when they are
5 laid down and I am directly observing a Pap smear. I am also
6 missing hallway chatter, which includes valuable moments of
7 learning.

8 "I would like to ask again might I please bring my own
9 interpreter at my own cost? If not, may I please have an
10 explanation? I did not receive an answer to my last e-mail.
11 This is a very intense year and the longitudinal clinic is
12 well worth my time if I can successfully access it equal to my
13 peers so I can prepare for OSCEs, next year's rotations and my
14 own development as a physician.

15 "I look forward to your response and will see you
16 Tuesday."

17 Q. Can you explain what you were talking about when you
18 referenced the closed-captioning in that first paragraph?

19 A. I was referring to a film that was in the phlebotomy lab
20 that introduced a technique for the blood draw and it was not
21 closed-captioned.

22 Q. Did you receive any response to this e-mail?

23 A. No.

24 MS. VARGAS: If I may approach the witness and show
25 the witness Plaintiff's Exhibit 24?

1 THE COURT: You may.

2 BY MS. VARGAS:

3 Q. Do you recognize this document?

4 A. Yes, I do.

5 Q. What is it?

6 A. Just the first page or all?

7 Q. Is that Plaintiff's Exhibit 24?

8 A. 24. Yeah.

9 MR. MOORE: My 24 is a one-page.

10 MS. VARGAS: One moment, please.

11 BY MS. VARGAS:

12 Q. Looking at the first page of Exhibit 24 -- I'm sorry --
13 do you recognize this document?

14 A. Yes, I do.

15 Q. And what is it?

16 A. This is an e-mail that I sent to Dr. Hansen on October
17 20, 2010.

18 Q. Okay. And is this a true and accurate copy of that
19 e-mail?

20 A. Yes, it is.

21 MS. VARGAS: Your Honor, may we have Plaintiff's
22 Exhibit 24 entered into evidence?

23 MR. MOORE: Your Honor, we only have one page as 24.

24 MS. VARGAS: May I approach the witness and make sure
25 I've given him the correct...

1 THE COURT: You may.

2 (Off-the-record discussion had.)

3 THE COURT: Just to clarify for my own reference,
4 Ms. Vargas, is Exhibit 24 only the one page that reflects an
5 e-mail sent by the plaintiff to Dr. Hansen on October 20,
6 2010?

7 MS. VARGAS: Yes, it is, your Honor.

8 THE COURT: Okay. Thank you.

9 MS. VARGAS: And I'm sorry, have we had this admitted
10 into evidence?

11 THE COURT: 24 has not yet been admitted, it's been
12 offered.

13 MR. MOORE: No objections, your Honor.

14 THE COURT: Exhibit 24 is received.

15 MS. VARGAS: Thank you. I'm sorry about that.

16 BY MS. VARGAS:

17 Q. Okay. Can you read this e-mail for us, please?

18 A. "Dear Dr. Hansen, I'm looking forward to meeting
19 Dr. Hudson and appreciate the organization of this opportunity
20 to explore pediatrics. However, placing me in another clinic
21 without communication does not resolve the need for
22 accommodation. As I've said before, I am requesting
23 accommodation in the clinic. I am not asking for an
24 interpreter to mediate clinical judgment or make decisions for
25 me - the interpreter would translate so that I could

1 communicate effectively. The clinical judgment would be my
2 own. A pediatric clinic involves communication with both
3 children and their parents. I would like to be able to
4 participate and communicate effectively in this setting.

5 "While I know that Creighton University has refused to
6 provide an interpreter, I would respectfully request that you
7 reconsider the decision to restrict me from providing an
8 interpreter at my own expense while the case is pending. I
9 will also see you shortly before the Christmas break to
10 compare clinics as we planned."

11 Q. Did you receive a response to that e-mail?

12 A. No.

13 MS. VARGAS: If I may approach the witness and show
14 him what's marked as Plaintiff's Exhibit 25, your Honor?

15 THE COURT: You may.

16 BY MS. VARGAS:

17 Q. Do you recognize this document, Mr. Argenyi?

18 A. Yes, I do.

19 Q. What is it?

20 A. It's two e-mails that I sent to Dr. Hansen.

21 Q. And does this represent a true and accurate copy of the
22 e-mails that you sent?

23 A. Yes.

24 MS. VARGAS: Your Honor, I move that Plaintiff's
25 Exhibit 25 be admitted into evidence.

1 MR. MOORE: No objection, your Honor.

2 THE COURT: Exhibit 25 is received.

3 MS. VARGAS: Thank you.

4 BY MS. VARGAS:

5 Q. Could you please read the e-mail at the top of the page?

6 A. December 6, 2010. I said, "Dear Dr. Hansen, Now that
7 I've had an opportunity to be at the pediatrics clinic twice,
8 as well as continue the adult clinic, I truly enjoy both
9 practice areas for different reasons. However, I am still
10 having the same communication difficulties in both clinics.
11 One difficulty is that in both clinics there are frequently
12 multiple people participating in a conversation which causes
13 greater communication difficulties. For example, in a consult
14 on a two-week-old, with multiple people participating in the
15 conversation, I was not able to see all of the faces present,
16 much less lip-read. I continue to find that I need
17 accommodation to confidently and effectively communicate in
18 the clinic setting. Without accommodation, I don't have full
19 access to develop the thought process of a physician nor
20 enough foundation for me to confidently proceed from the
21 history taking to the physical examination. It is slowing my
22 development as a physician as well as hampering the
23 development of my relationship with the patient.

24 "Once again, would you please consider allowing me to
25 bring an interpreter? This interpreter solely functions as a

1 conduit of information for me to then make my own clinical
2 judgment.

3 "I've also put out an e-mail to Monica for meeting with
4 you soon and will arrange that as soon as I hear back from
5 her."

6 Q. Did you get a response to that e-mail?

7 A. I did not.

8 Q. How did your experience in the clinic without an
9 interpreter compare to your experience as a certified nurse's
10 assistant?

11 A. It was very different. As a certified nursing assistant,
12 I was not responsible for diagnosing the patient; I was not
13 responsible for knowing their patient history, for knowing
14 their family background, for knowing all of these details
15 about them.

16 As a doctor in training, I needed to be responsible for
17 getting every word for me to make my own decision, to make a
18 diagnosis, to make a potential plan of treatment. Even though
19 I was being overseen by an attending, this was the way for me
20 to learn those skills.

21 When I graduate from medical school, I need to be able to
22 know how to do all of that. And in order to do all of that, I
23 need every word from that patient. I need to be confident in
24 what I'm doing. I want to be somebody's doctor but I can't do
25 that without all of the information.

1 Q. Were there parts of the clinical experience at Creighton
2 that were more difficult than others?

3 A. There was not an overall pattern. There were themes such
4 as when I would enter into a patient room, if there was more
5 than one person, that was typically more difficult. However,
6 I could never predict what patients would be easy to
7 understand and what might not be.

8 MS. VARGAS: At this point, your Honor, I would ask
9 that we have a sidebar.

10 THE COURT: All right.

11 (Bench conference on the record.)

12 MS. VARGAS: We're mindful of the Court's order in
13 the motion in limine with respect to asking about the time
14 that Mr. Argenyi had interpreters in the clinic during the
15 course of settlement discussions and we'd like permission to
16 be able to ask Mr. Argenyi to compare the experience with the
17 interpreters and without the interpreters.

18 And we believe that pursuant to Rule 403(b) we're allowed
19 to have him testify that interpreters were present only
20 because of settlement discussions; not to go to any questions
21 related to the settlement itself so that defendant can't paint
22 that communication as if it offered that out of the goodness
23 of its own heart. That would prejudice the jury's impression
24 of what actually happened.

25 So we don't intend to offer any testimony of dollars or

1 settlement, how it went wrong or how it went right. It's for
2 him to be able to explain I had interpreters in the clinic and
3 this is how it happened.

4 THE COURT: Before I ask for a response, let me ask
5 one question.

6 Without getting into why he had interpreters at one point
7 in time, if you simply asked him if there was a period of time
8 where he was allowed to bring an interpreter into the clinical
9 setting and how that worked, and then just -- and compare it
10 with how it worked when he couldn't have the interpreter but
11 not mention anything about settlement. Why can you not do
12 that?

13 MS. VARGAS: The problem with that is one of the
14 elements of the case that we're required to prove in order to
15 be entitled to seek damages from the jury is intent. And one
16 of the key underpinnings of our intent case is that defendant
17 refused to allow interpreters in the clinic even if they
18 paid -- even if he paid for them himself.

19 They have indicated an intention to assert undue burden.
20 And so the idea that they -- to distort why interpreters were
21 in the clinic would lead to the conclusions that they did
22 allow interpreters in the clinic and our point is that they
23 didn't.

24 THE COURT: Well, and I think you've already gotten
25 in the fact that they have refused to allow the interpreters

1 in the clinic even if he paid for them himself. And if you
2 want to talk about the fact that for a period of time he was
3 allowed to have the interpreters in the clinic and how that
4 worked compared to the time that he was not allowed to have
5 interpreters, that's fine, but I don't want you mentioning
6 settlement.

7 MS. JACKSON: But then the defendant would be
8 prohibited from also talking about the fact that they allowed
9 interpreters in the clinic.

10 THE COURT: Only in connection with settlement --
11 it's a fact that interpreters were in there for a period and
12 then the defendant said they can't be there.

13 MS. VARGAS: This falls squarely in the exception of
14 403(b). We're not offering it to prove settlement, we're not
15 offering it to offer any content of the settlement. But this
16 testimony coming in suggesting that, oh, they allowed
17 interpreters in the clinic, entirely distorts the facts of our
18 intent case which is they didn't allow interpreters in the
19 clinic even if he paid for them except in settlement. And
20 that's in 403(b). And doing otherwise is highly prejudicial
21 to the plaintiff's case.

22 THE COURT: I disagree. I think you've already made
23 it clear that the defendant would not allow the plaintiff to
24 bring interpreters into the clinic even if he paid for them
25 himself. That's been shown. You have not gotten into the

1 fact that at one point in time he did bring interpreters into
2 the clinic and then was later not allowed to. You can get
3 into that all you want but not mention that it was in
4 connection with settlement negotiations.

5 MS. VARGAS: But then --

6 THE COURT: That's basically -- that was my ruling
7 before; that's still my ruling.

8 MS. DeLAIR: I guess the concern is, your Honor, we
9 expect defendant to provide testimony that we gave him
10 interpreters in the clinic but he didn't need them.

11 MS. VARGAS: That's why we removed them.

12 MS. DeLAIR: And I expect Dr. Townley to provide
13 that.

14 THE COURT: We're getting ahead of ourselves. We're
15 trying to anticipate --

16 MS. VARGAS: He said this in a sidebar yesterday.

17 THE COURT: Eventually I'll let defense counsel talk.
18 But if defense counsel then were to introduce the evidence
19 with the spin that, gosh, we let him have the interpreters and
20 he didn't need them, and that's why we took them away, then
21 perhaps you can get into the line of questioning that you want
22 to get into but that hasn't happened yet.

23 MS. VARGAS: Your Honor, my concern is that the
24 defendant doesn't need to put any spin on it because the
25 underpinnings of our intent case, they said he couldn't have

1 them in the clinic even if he paid for them.

2 THE COURT: You've gotten that in. You've
3 demonstrated that. And you can do it again, if you want to.
4 That's already in front of the jury.

5 MS. VARGAS: Will he be permitted to offer testimony
6 that there were interpreters in the clinic?

7 MR. MOORE: That's already going to be in. What do
8 you mean?

9 MS. VARGAS: It distorts the facts. It fundamentally
10 distorts the facts and it's expressly permitted by 403(b).

11 MR. MOORE: So wait a minute -- oh, I'm sorry.

12 THE COURT: I'm just trying to think through this.
13 So you're anticipating that the defendant will offer evidence
14 that there were interpreters in the clinic at one point in
15 time.

16 MS. VARGAS: Your Honor, yesterday during Mr. Moore's
17 opening statement he testified -- he offered an opening
18 statement in which he said that they evaluated him with
19 interpreters in the clinic, and I objected. And we came up
20 and had a sidebar and we talked about that information. So
21 he's already told the jury that. And to then allow him to
22 present a difference -- he doesn't have to say anything else.

23 The fact they let interpreters into the clinic takes away
24 the intent of our case. And it's factually not what happened.
25 That's exactly why 403(b) says evidence of settlement is

1 allowed in for other purposes as long as we're not seeking to
2 prove amounts or the settlement itself.

3 THE COURT: Well, opening statement is not evidence.
4 I say that to the jury at several points in the instructions.

5 If defense counsel gets into the use of the interpreters
6 in the clinical setting, leaving the impression with the jury
7 that Creighton concluded the plaintiff didn't need the
8 interpreters and that's why Creighton stopped offering
9 interpreting, then on your redirect, you may be able to get
10 into the line of questioning you want to get into.

11 But, right now, my order still stands that you can't talk
12 about settlement.

13 MR. MOORE: So I guess I'm a little confused right
14 now. I understood we could never talk about settlement.

15 THE COURT: That's still my ruling.

16 MR. MOORE: But I didn't understand there would be no
17 evidence that the interpreters were actually present in the
18 clinic.

19 THE COURT: And I have not ruled that.

20 MR. MOORE: So that -- the fact that there were
21 interpreters in the clinic is evidence, it is a fact. We're
22 not going to say we did it because we wanted to be nice
23 guys --

24 MS. VARGAS: You don't have to.

25 MR. MOORE: Can I finish?

1 Or we took it out because we did have an evaluation and
2 -- but the fact is, is that his preceptor evaluated him
3 throughout the whole year, and at times he did have
4 interpreters, at times he didn't. But we never want to
5 mention settlement or why we did it, that we were good guys
6 about anything. We still stick with the fact that's why we
7 let all that in. We -- we refused to provide interpreters
8 even if he paid for it himself.

9 THE COURT: And if you start getting into -- I'm
10 talking to defense counsel now, just for the record.

11 If you start getting into a theory that the reason
12 Creighton stopped providing the interpreters in the clinic was
13 because Creighton concluded Argenyi didn't need them, then --

14 MR. MOORE: Sure.

15 THE COURT: -- the plaintiff may be able to come in
16 with the different rationale.

17 MR. MOORE: We won't do that.

18 THE COURT: I've said as much as I can say to that.

19 MR. MOORE: Since we're up here -- well, I'll wait.
20 I'll wait and see if she offers it.

21 (End of bench conference.)

22 THE COURT: You may continue.

23 MS. VARGAS: I'm sorry, your Honor. Could we please
24 have another sidebar?

25 THE COURT: Yes.

1 (Bench conference on the record.)

2 MS. VARGAS: Your Honor, I now understand what
3 Mr. Moore was about to say at the end of the last sidebar.
4 May I show you the exhibit that we intended to offer next
5 because it addresses -- it raises again all of the issues that
6 we just discussed here and that's Exhibit --

7 THE COURT: 26.

8 MS. VARGAS: -- 26, excuse me. It's all copies.
9 It's one page.

10 THE COURT: All right. While we're here at sidebar,
11 assuming the plaintiff offers Exhibit 26, what is the
12 defendant's response?

13 MR. MOORE: Well, a couple responses: First of all,
14 with regard to the last paragraph, second sentence that starts
15 "I don't understand why Creighton decided I need
16 interpreters" -- and then suddenly ordered them out of the
17 clinic, as you'll see that was sent on April 7th of 2011.

18 I'd like to show the Court what's been previously marked
19 as Exhibit 63 which is dated February 23, 2011, which explains
20 exactly why Creighton took the interpreters out of the clinic.

21 So, obviously, that's a -- we would say a
22 misrepresentation of the facts. And the only way to impeach
23 him is with that letter.

24 MS. VARGAS: So now you want to be able to talk about
25 settlement?

1 MR. MOORE: No, I don't think that's admissible is
2 what I'm saying.

3 THE COURT: Okay. And so --

4 MR. MOORE: That's one part.

5 THE COURT: All right. You object to Plaintiff's
6 Exhibit 26 on the basis of...

7 MR. MOORE: I think by offering it, they're offering
8 information that the only way to impeach it is to offer the
9 information regarding settlement which we object to in the
10 first place.

11 So if they're allowed to put on testimony that, you know,
12 he really didn't understand why Creighton had pulled the
13 interpreters out, which this letter clearly shows he did, we
14 would have to introduce that. I mean, a lot of this is
15 impeachable because the lawyers were talking at this time but
16 that's something else. I just think that is -- it's
17 prejudicial, it's -- the only way to rebut it would be to
18 violate the Court's order and offer evidence we think is
19 objectionable.

20 Again, we understood that the order was we're not talking
21 about settlement and, quite frankly, not talking about why the
22 interpreters were there and why they left.

23 THE COURT: Introduction of Exhibit 26 would conflict
24 with my earlier order regarding references to settlement
25 negotiations because it does refer to Creighton University

1 agreeing to provide the interpreters and that agreement was in
2 connection with settlement negotiations.

3 The plaintiff can certainly testify that he sent another
4 e-mail to Dr. Hansen on April 7 of 2011 and that he brought
5 certain information to the attention of Dr. Hansen on that
6 date. And he can summarize what he brought to the attention
7 of Dr. Hansen regarding his inability to communicate in the
8 clinical setting without the use of an interpreter.

9 And then again as we discussed at the last sidebar, if
10 you want to get into the fact that he did at one point use
11 interpreters in the clinical setting and then compare how he
12 functioned with the interpreter, as opposed to working without
13 the interpreter, you can do that.

14 MS. VARGAS: I just want to make sure I understand.
15 So if we don't offer testimony that he had interpreters in the
16 clinic at one point, will the defendant be allowed to offer
17 that testimony?

18 THE COURT: He cannot offer it in connection with
19 settlement negotiations. It is a fact that Mr. Argenyi did
20 have an interpreter in the clinical settings at some point in
21 time and that in itself does not violate the Court's earlier
22 order regarding settlement negotiations. It's just why he had
23 the interpreter there.

24 MS. VARGAS: I understand your ruling.

25 THE COURT: The fact that this e-mail indicates

1 Creighton University agreed to provide the interpreters, talks
2 about the rationale for why they were there, that's why I
3 would find Exhibit 26 to be objectionable and contrary to the
4 Court's earlier order on the motion in limine. You know, it's
5 possible that this could be redacted but I'm not going to go
6 there for you. That's up to you.

7 MS. VARGAS: At this point respectfully, your Honor,
8 I would maintain my objection for a few different reasons.
9 This document goes directly to notice and intent and to a key
10 element of the plaintiff's claim what they knew, what their
11 clients knew and how they acted and why they acted. It goes
12 to deliberate indifference.

13 THE COURT: There is no doubt that it's relevant.
14 There's no doubt it has relevant information in here.

15 I'm sorry, I have interrupted you.

16 The problem is just certain content of the e-mail runs
17 contrary to the Court's order in limine regarding settlement
18 negotiations. If that can be redacted, you can get it in.

19 MS. VARGAS: Respectfully, 403(b) says evidence of
20 settlement discussions is admissible for other purposes such
21 as notice and intent. And I maintain the same objection that
22 offering it in any other form would prejudice the plaintiff's
23 case and benefit the defendant's case.

24 THE COURT: You can make an offer of proof right now
25 if you want to.

1 MS. VARGAS: I guess I'm not clear on what you're
2 suggesting.

3 THE COURT: If you want to make an offer of proof of
4 Plaintiff's Exhibit 26 for the record, you can do that.

5 MS. VARGAS: Okay. I would like to make an offer of
6 proof with respect to Exhibit 26. It goes directly to notice
7 and so far as it shows Creighton University maintained its
8 policy of not providing interpretation in the clinic even if
9 Mr. Argenyi paid for them, except that it only allowed him to
10 do so during the course of settlement discussions.

11 We have no intention of discussing the nature of the
12 settlement discussions or to talk about the truth of the
13 settlement discussions or anything to do with that. We simply
14 want to show that he had -- how he did with the interpreters
15 and without them, and we're unable to offer that testimony
16 because offering that testimony with the key facts that it was
17 only allowed during settlement discussions severely prejudices
18 the plaintiff and entirely alters the truth of the facts in a
19 way that benefits the defendant.

20 THE COURT: And your offer of proof is preserved for
21 the record with respect to Plaintiff's Exhibit 26, and it will
22 be available for the Eighth Circuit and anyone else to see who
23 looks at the entire record in the case, but it would not be
24 available for the jury to see.

25 MS. VARGAS: Thank you.

1 MR. MOORE: I just want to note for the record that
2 the defendant would be agreeable to redacting those portions
3 of this e-mail that refer to settlement.

4 THE COURT: Noted. Thank you.

5 (End of bench conference.)

6 BY MS. VARGAS:

7 Q. Mr. Argenyi, moving to the very end of the second year of
8 medical school, April, May of 2011, can you tell me generally
9 what your experience in the clinic was like without
10 interpreters?

11 A. My experience was that I could not access information. I
12 could not get a complete patient history. I could not
13 confidently go from that history to an examination. I did not
14 feel like I was ready for second -- for third year. I felt
15 like I could have had more practice with all of my
16 examinations. I felt like I could have done a better job had
17 I had access to the information.

18 I felt embarrassed when I went in and I talked with
19 patients and they could tell that I wasn't understanding but
20 they didn't want to point it out. And I didn't want to -- to
21 me, it's not their burden to make me understand. It's my
22 burden to make sure that the communication is happening, not
23 theirs. And every time that happened, I felt embarrassed.

24 I especially felt embarrassed with people who had accents
25 that -- or ailments that -- one person had a history of a

1 broken jaw. And these people, I think they blamed themselves
2 for me not understanding them, and that's not okay because
3 it's not their fault.

4 MR. MOORE: Your Honor, at this time I'd object as
5 narrative.

6 THE COURT: Sustained. We'll have a new question.

7 BY MS. VARGAS:

8 Q. Without going into specifics, did you have an opportunity
9 to again contact Dr. Creighton -- I'm sorry, Dr. Hansen about
10 your experiences in the clinic in April of 2011?

11 A. Yes. I sent another e-mail where I explained that I was
12 having difficulties in the clinic and they had not improved
13 over the year.

14 Q. And did Dr. Hansen ever respond to that e-mail?

15 A. No.

16 Q. Do you know approximately what the tuition was for the
17 second year -- that you paid for the second year of Creighton
18 medical education?

19 A. Tuition itself, not including other expenses, was, I
20 think, 46,000.

21 Q. And how much did you pay on top of that in order to have
22 access to the education you had purchased?

23 A. I paid about 60,000.

24 Q. How did you feel about paying for your own auxiliary aids
25 in the second year of medical school?

1 A. When I started, it was a practical solution. It's what I
2 needed to be able to go in the clinics. It was still what I
3 needed; but by the end of the second year, I couldn't see how
4 I was going to continue if I couldn't pay for the interpreter
5 either.

6 Q. So what did you do at the end of M2, your second year of
7 medical school?

8 A. Since I was not allowed to have an interpreter, I didn't
9 have a choice. I had to find an alternate plan so I requested
10 a leave of absence.

11 Q. Can you tell me about what the third and fourth year of
12 medical school is like?

13 A. The third and fourth year of medical school are just
14 about entirely clinical, there's a little bit of lecture, but
15 the majority of your time -- I mean, 90, 95 percent of your
16 time, I don't know exactly, is spent doing clinical work. You
17 go through, I believe if I recall correctly, six different
18 rotations during your third year such as internal medicine,
19 family medicine, pediatrics, surgery, and I can't recall the
20 other two.

21 And then during your fourth year, you do a couple of --
22 that you get to choose what you would like. So you might
23 choose ones that teach you skills that are completely opposite
24 of what you're going into or you might choose ones that are
25 dedicated to the field that you're interested in.

1 Q. Did you want to leave Creighton after you completed the
2 second year of medical school?

3 A. No.

4 Q. What did you do during your leave of absence?

5 A. So I found a local solution. I contacted the Boys Town
6 National Research Hospital next to Creighton and worked with
7 them to try to find a place for me to do research for one
8 year.

9 Q. And what kind of research did you do?

10 A. I did research in an auditory lab -- audiology lab that
11 looked at acoustic brain stem responses.

12 Q. And what did you do after that?

13 A. After that -- during that year there did not seem to be
14 any kind of solution -- there seemed to be no solution coming.
15 I was still trying to talk to Creighton about having
16 interpreters in the clinic, and there didn't seem to be -- it
17 didn't seem like that was happening so I started looking at
18 alternate plans.

19 And I decided to try to find something that was
20 complimentary to medicine. So I looked at schools that
21 offered a public health degree. And during my search I found
22 a dual degree program that includes a social work degree,
23 master's in social work and master's in public health. And I
24 felt that would be a way to learn the application of
25 population medicine and public health education to my future

1 practice of medicine as well as maintain the clinical side of
2 one-on-one and group interaction through the social work.

3 Q. I'm sorry, where -- where is that joint degree program?

4 A. That program is at Boston University in Boston,
5 Massachusetts.

6 Q. And so that's where you currently are? That's where
7 you're currently set up?

8 A. Yes.

9 Q. How did it feel to have Creighton's lawyers tell you that
10 Creighton thought you might not be qualified to start medical
11 school in August of 2009?

12 A. It scared me. I'd just moved from Seattle -- I was in
13 Seattle previously. And it scared me. I had just gotten an
14 apartment -- an apartment for the year. I was here by myself.
15 I had moved everything. I had -- you know, I had sent all
16 this documentation. I felt that really we would come to a
17 resolution.

18 And when I -- when I was told that I would not -- that I
19 might not be qualified for everything that I had been working
20 for all this time, did I make a major mistake? And is there
21 anybody who will support me here at this school of medicine?

22 Q. What are your medical school classmates doing now?

23 MR. MOORE: Objection, foundation.

24 BY MS. VARGAS:

25 Q. If you know.

1 THE COURT: Overruled. He may answer.

2 A. Well, I actually know that several of them started
3 residency last month. One of them was in the Boston area for
4 her interviews last year.

5 BY MS. VARGAS:

6 Q. So when should you have graduated from Creighton
7 University as a doctor?

8 A. I should have graduated this last spring.

9 Q. Do you have debt from paying medical school tuition?

10 A. Yes.

11 Q. How much is that debt today?

12 A. Around 130,000.

13 Q. Do you have debt from paying for auxiliary aids and
14 services?

15 A. Yes.

16 Q. And how much is that debt today?

17 A. That's about 110,000 as well.

18 Q. Have you been making payments?

19 A. I've made some payments.

20 Q. When you had to take a leave of absence, did you tell
21 your mother?

22 A. Yes.

23 Q. How did that feel?

24 A. It was hard. You know, I got through two years here. I
25 mean, coming through school in and of itself was hard every

1 day because I didn't know -- the more it went on, the more I
2 really couldn't trust anybody. I couldn't even talk to my
3 classmates about it because my Creighton University experience
4 wasn't their experience, and that's not their -- that's not
5 for me to take that away from them.

6 So I felt really isolated and I still went. I still did
7 everything that I could. I still made the best out of it. I
8 went in planning to become a doctor. And when I got -- when
9 it got to the end of second year and I was stuck, you know, I
10 told my mom. And she immediately said, "Are you sure you
11 don't want to try without interpreters," and I said, "Mom, you
12 know I can't." And she said, "I know. I just hate to see you
13 give up."

14 And, you know, hearing that from my mom is like -- I felt
15 like a failure having to tell everybody that I couldn't go on.
16 They understood why I was doing it, but -- why I couldn't but
17 it just feels -- you know, I explained to people I went to
18 medical school for two years, and they say, "Why didn't you
19 continue," and I say, "I can't." And even when you explain
20 the story, people are -- it's different. You feel like a
21 failure even if they don't see it that way.

22 Q. Are you currently employed?

23 A. Yes.

24 Q. And is that a new job?

25 A. I had two jobs -- I have two jobs. I'm a research

1 assistant at Boston's Children's Hospital and I am a program
2 coordinator for the health education called Project Hope at a
3 deaf services agency.

4 Q. At any point towards the very end of the second year of
5 medical school, were you ever told not to make any other
6 requests for accommodation?

7 A. Yes.

8 Q. Who told you that?

9 A. Dr. Hansen.

10 Q. You testified that you're currently working at Boston
11 Children's Hospital; is that correct?

12 A. Yes.

13 Q. Do you see residents around that facility?

14 A. Yes.

15 Q. How does it feel when you see medical residents?

16 A. It makes me miss everything.

17 MS. VARGAS: No further questions, your Honor.

18 THE COURT: Cross-examination.

19 MR. MOORE: May I have one moment, your Honor?

20 THE COURT: You may.

21 (Off-the-record discussion had.)

22 CROSS-EXAMINATION

23 BY MR. MOORE:

24 Q. Mr. Argenyi, good afternoon.

25 A. Hello.

1 Q. When you were invited onto Creighton's campus for an
2 interview and a tour, I believe you said that you didn't
3 request any accommodations for the interview; that is correct?

4 A. Yes.

5 Q. And I believe that you said that you didn't request any
6 accommodations because you would like to -- I believe you said
7 build a rapport with whoever is interviewing you; is that
8 correct?

9 A. Yes.

10 Q. Don't you have that same concern with patients as you saw
11 them as a physician?

12 MS. VARGAS: Objection, your Honor.

13 THE COURT: Overruled. He may answer.

14 A. No.

15 BY MR. MOORE:

16 Q. You wouldn't?

17 A. No.

18 Q. You don't want to build a rapport with your patients?

19 A. No, I have to, but the concern is not the same.

20 Q. Now, you considered your interview a very positive
21 experience; is that correct?

22 A. I did.

23 Q. And you had applied to several other medical schools in
24 addition to Creighton, correct?

25 A. I had.

1 Q. And am I correct in saying that Creighton was the only
2 one that offered you admittance?

3 A. Yes.

4 Q. And you applied to the University of Washington Medical
5 School; is that correct?

6 A. I did, my home school.

7 Q. Excuse me, your home school?

8 A. Yes. I'm from Seattle.

9 Q. You really wanted to go there.

10 A. It was just my home school.

11 Q. And I believe you said you got a funny feeling when you
12 spoke with people from that law school; is that correct?

13 A. Not the law school.

14 Q. Excuse me?

15 A. Not the law school.

16 Q. I'm sorry. I said it again. I apologize, sir. Very
17 good.

18 A. Yes.

19 Q. When you spoke with individuals from the University of
20 Washington Medical School, you said you got a funny feeling,
21 correct?

22 A. I did.

23 Q. And they said some comments that you believe were related
24 to your hearing impairment; is that correct?

25 A. Yes, they did.

1 Q. And you believed that perhaps your hearing impairment may
2 have had something to do with them not accepting you; is that
3 correct?

4 A. It may have.

5 Q. Now, in the past, before you attended Creighton Medical
6 School, at the elementary school, high school and college
7 level, as I understand your testimony, the only thing that you
8 ever submitted was an audiogram in support of your requests
9 for accommodations; is that correct?

10 A. I don't know about my elementary school or high school
11 but that was the case for college.

12 Q. So the college -- the community colleges you just gave
13 them your audiogram, correct?

14 A. Yes.

15 Q. And they gave you whatever you asked for, correct?

16 A. They asked that it be what I requested.

17 Q. Is that a yes?

18 A. Yes.

19 Q. And, in fact, because of that you were surprised when
20 Creighton asked for documentation of the need for the
21 accommodations that you were requesting, correct?

22 A. Yes.

23 Q. You're not claiming there was anything inappropriate
24 about them asking for information, are you?

25 A. No.

1 Q. So in college, no one asked you for documentation other
2 than your audiogram to establish your need for either CART or
3 interpreters, correct?

4 A. Correct.

5 Q. No one ever -- ever evaluated the impact of your use of
6 those in those settings, did they?

7 A. Not that I'm aware of.

8 Q. No one ever asked you about the cost or the expense or
9 talked to you about those things, did they?

10 A. Not to me.

11 Q. Sir, did you believe your experience as a CNA was
12 something that you wanted to highlight in your application for
13 medical school?

14 A. Absolutely.

15 Q. Because that was working in the medical setting,
16 including in an emergency department, correct?

17 A. Because it was exposure to the medical environment.

18 Q. And I think you indicated you had assisted in procedures
19 as a CNA at Children's Hospital; is that correct?

20 A. Right.

21 Q. Things like punctures, correct?

22 A. I'm sorry, things like what?

23 Q. Punctures.

24 A. I assisted with them.

25 Q. And IV placement, correct?

1 A. I assisted with them.

2 Q. And putting down nasogastric tubes?

3 A. I assisted with them.

4 Q. And similar procedures, correct?

5 A. Yes.

6 Q. And you observed seizure activity; is that correct?

7 A. Yes.

8 Q. And on some occasions you may be the only tech on duty on
9 certain shifts; isn't that correct?

10 A. Yes.

11 Q. You were responsible at Seattle Children's Hospital to
12 communicate verbally, correct?

13 A. Yes.

14 Q. And working and communicating with members of what's
15 known as the multidisciplinary team, correct?

16 A. Yes.

17 Q. So you were required to communicate verbally with
18 physicians, correct?

19 A. Yes.

20 Q. Nurses, correct?

21 A. Yes.

22 Q. Other techs, correct?

23 A. Yes.

24 Q. I believe you helped in the triage process and also
25 negotiated care with families, correct?

1 A. Yes.

2 Q. And you took vital signs.

3 A. Yes.

4 Q. And you helped settle incoming ambulances.

5 A. I'm sorry, what?

6 Q. Helped settle incoming ambulances.

7 A. Yes.

8 Q. And when you were transporting patients to maybe get a
9 CAT scan or an X-ray or to surgery, you were required to
10 communicate with those patients, correct?

11 A. Yes.

12 Q. And you did that verbally, correct?

13 A. Yes.

14 Q. And everything that I've just talked about you're doing
15 at Children's Hospital you did with no accommodation other
16 than a text pager, correct?

17 A. Yes.

18 Q. You weren't provided interpreters, correct?

19 A. Correct.

20 Q. You were not provided CART, correct?

21 A. Right.

22 Q. I'd like to direct your attention to Exhibit 3 which I
23 believe is already in evidence.

24 THE COURT: It is in evidence.

25 MR. MOORE: Thank you, your Honor.

1 MS. BALUS: May I approach the witness, your Honor?

2 MS. VARGAS: Your Honor, if we could use the exhibit
3 that's been admitted into evidence as the plaintiff's exhibit.
4 Do you have a copy of the plaintiff's exhibit?

5 MS. BALUS: I don't think so.

6 MR. MOORE: If it's already up there, that's fine. I
7 just didn't want to --

8 MS. VARGAS: Well, I'm not sure the stickers match,
9 that's all.

10 MS. BALUS: Whatever copy you want me to hand him is
11 fine.

12 THE COURT: The plaintiff has Exhibit 3 before him.
13 He can use that copy.

14 MR. MOORE: Okay.

15 BY MR. MOORE:

16 Q. Sir, you recognize Exhibit 3, correct?

17 A. Right.

18 Q. And you talked about this on your direct examination,
19 correct?

20 A. Yes.

21 Q. I don't want you to read it. I know that this has been
22 read to the jury and the jury understands. These were all the
23 requests that you made for your first year of medical school
24 at Creighton University, correct?

25 A. Yes.

1 Q. And you believe that all these accommodations were
2 necessary for you to have effective communication, correct?

3 A. Yes.

4 Q. And even as you sit here today, you believe that all of
5 these accommodations, all these auxiliary aids and services
6 were necessary for effective communication, correct?

7 A. Absolutely.

8 Q. And Creighton couldn't have provided something less than
9 you were requesting and provided effective communication,
10 right?

11 A. It would not have been effective.

12 Q. So it was either this or nothing, correct?

13 A. What I tried was not effective; so, no.

14 Q. So you said no. My question is if Creighton didn't
15 provide all of these accommodations, it would have not -- I
16 withdraw the question, I apologize.

17 If Creighton would not have provided all of these
18 accommodations, then it wouldn't have been effective, correct?

19 A. Can you restate that a different way?

20 Q. Sure. I asked you as you sit here today that you believe
21 that all of these accommodations were necessary for effective
22 communication, correct?

23 A. Yes.

24 Q. And if Creighton didn't provide these, it wasn't
25 providing effective communication, correct?

1 A. Yes.

2 (Off-the-record discussion had.)

3 BY MR. MOORE:

4 Q. Sir, I'd like to direct your attention to Exhibit No. 16
5 which is already in evidence. Do you have a copy of that,
6 sir?

7 Mr. Argenyi, we will bring it up on the screen if you can
8 read it in that way. Would that be sufficient?

9 A. Yes.

10 Q. Thank you.

11 Directing your attention to Exhibit 16, that is a letter
12 from Dr. Backous to Michael Kavan. Do you recognize that
13 document?

14 A. Yes.

15 Q. You asked Dr. Backous to submit that letter on your
16 behalf, correct?

17 A. I did.

18 Q. And you received a copy of it, correct?

19 A. I did.

20 Q. And you never asked him to correct anything in that
21 letter, correct?

22 A. I did not.

23 Q. I'd like to direct your attention now to Exhibit 17.

24 Sir, it's on the screen. Do you recognize that document?

25 A. I do.

1 Q. And is that a letter dated May 27th, 2009, that you asked
2 Dr. Backous and Stacey Watson to send to Creighton University
3 on your behalf?

4 A. Yes.

5 Q. And you received a copy of that letter, correct?

6 A. Yes.

7 Q. And you never asked either Stacey Watson or Dr. Backous
8 to correct anything in that letter, correct?

9 A. Yes.

10 Q. I'd like to now bring up on the screen Exhibit 18 which
11 is already in evidence. Sir, do you recognize that document?

12 A. I do.

13 Q. And that's the September 10th, 2009, letter that
14 Dr. Backous and Stacey Watson submitted to Creighton
15 University, correct?

16 A. Yes.

17 Q. And you asked them to submit that on your behalf,
18 correct?

19 A. Yes.

20 Q. And you received a copy?

21 A. Yes.

22 Q. And you never asked them to correct anything in that
23 letter, did you?

24 A. Right.

25 Q. I'd like to now direct your attention to Exhibit 19.

1 That's the letter dated September 28 from Dr. Backous and
2 Stacey Watson to Creighton University. Do you recognize that
3 document?

4 A. Yes.

5 Q. And you received a copy of that document, didn't you,
6 sir?

7 A. Yes.

8 Q. And am I correct in saying that you never asked them to
9 correct anything in that letter; is that right?

10 A. Yes.

11 Q. Sir, I'd now like to direct your attention to Exhibit 5
12 that we'll bring up on the screen. You recognize Exhibit 5,
13 don't you, sir?

14 A. Yes.

15 Q. And that was the letter that you submitted to Creighton
16 dated May 26, 2009, correct?

17 A. Yes.

18 Q. And you submitted that in support of your request for
19 accommodations, correct?

20 A. Yes.

21 Q. All right. I'd like to look at the paragraph under
22 "Regarding the technical standards" and we'll blow that up a
23 little bit so you can read it.

24 Now, in this portion of the letter, you indicate that you
25 had been working as a CNA at Children's Hospital, correct?

1 A. Yes.

2 Q. And again, you included some of the things that you had
3 been doing in the emergency department like obtaining brief
4 medications, allergy histories, vital signs, communicating
5 with patients and families, team members and members of other
6 departments. And you had been performing those duties
7 effectively without accommodations with the exception of a
8 text pager, correct?

9 A. Yeah.

10 Q. And you said: I believe this is clear proof that I'm
11 able to function in a medical setting and I fulfill the
12 technical standards for communication, correct?

13 A. Yeah.

14 Q. Then you go on to say that your supervisor, who I believe
15 is Amanda Mogg; is that correct?

16 A. Yes.

17 Q. That she was going to submit a letter on your behalf as
18 well, correct?

19 A. Yes.

20 Q. Okay. If we can now look at the bottom portion of that
21 letter under "regarding the difference between the technical
22 standards and need for accommodations"?

23 You in this paragraph informed Creighton that visual cues
24 may include lip-reading and body language as well as
25 contextual cues, correct?

1 A. Yes.

2 Q. And when you are outside of the academic setting, let's
3 say out with friends or at a restaurant and things, you rely
4 on visual cues such as lip-reading, body language and context;
5 is that correct?

6 A. Correct.

7 Q. And you don't normally have a sign language interpreter
8 or CART or something like that when you're going out to a
9 restaurant, correct?

10 A. Not true always.

11 Q. You said "not true always"?

12 A. Right.

13 Q. Does that mean that you generally don't have them or you
14 generally do have them?

15 A. Many of my friends know some basic signs.

16 Q. And again I'll ask you again, sir, when you go out to a
17 restaurant, you go out to dinner, you don't have an
18 interpreter with you or you don't have CART sitting at the
19 table, correct?

20 MS. VARGAS: Objection, asked and answered.

21 THE COURT: No, overruled; he may answer.

22 BY MR. MOORE:

23 Q. Correct?

24 A. I don't have an official interpreter or CART, no.

25 Q. And then you say: Given all these, I've been able to

1 obtain clinical information in a clinical setting without
2 significant accommodation. I may, for example, need some
3 technological modification for my stethoscope or the phone but
4 these will still be independently oriented accommodations
5 applicable in later clinical years. Do you see that?

6 A. Yes.

7 Q. Okay. So, you're saying there, sir, that you obtained
8 clinical information in the clinical setting without
9 significant accommodations. Do you see that?

10 A. Yes.

11 Q. And you believe, don't you, that significant
12 accommodation would be having another person there, an
13 interpreter there, correct? That would be significant
14 accommodations, correct?

15 A. Yeah.

16 Q. So what you're saying there is given that I've been able
17 to obtain clinical information in the clinical setting without
18 interpreters, right? Interpreter's a significant
19 accommodation, correct?

20 A. Yes.

21 Q. That you wouldn't need those but you may need some
22 technological modifications of your stethoscope or the phone,
23 right? That's it.

24 A. That's not what I said.

25 Q. That's not what it said?

1 A. No, it's -- I never stated that I would not need those.

2 Q. You do say -- and maybe I'm reading it wrong here. I've
3 been able to obtain clinic information in a clinic setting
4 without significant accommodations, which means without an
5 interpreter. I may, for example, need some technological
6 modifications for my stethoscope or phone. You see that?

7 A. I see that.

8 Q. That's not what you said?

9 A. That's what I wrote there.

10 Q. Okay. And you wrote that to Creighton, telling them this
11 is support for my accommodations that I need, correct?

12 A. Yes.

13 Q. Okay. Going down to the next paragraph, you say in the
14 second sentence: I would like to emphasize that I'm
15 requesting accommodations not for -- in clinical assessment
16 but for assistance in learning new material. Learning new
17 material without appropriate accommodations results in a high
18 level of fatigue and stress which would hinder reaching my
19 best performance. Do you see that?

20 A. Yeah.

21 Q. Okay. So as I understand it, you're saying that in
22 learning new material, that without the accommodations you're
23 asking for, it's going to hinder you being able to reach your
24 best performance, your highest performance, correct?

25 A. Yes.

1 Q. But you're also saying that your experience -- from your
2 experience you've been able to understand that you're not
3 going to be requesting assistance for clinical assessment,
4 correct?

5 MS. VARGAS: Objection, that's not what the witness
6 testified.

7 THE COURT: The witness may respond and clarify;
8 overruled.

9 A. Again, that's not what I stated. I stated that I had not
10 used accommodations in that clinical setting. I never stated
11 I would not need accommodations for that setting. I did say
12 there were improvements in technology that I would use in that
13 setting.

14 BY MR. MOORE:

15 Q. Did you say: I would like to emphasize I'm requesting
16 accommodations not for assistance in clinical assessment but
17 for assistance in learning new material? That's what you
18 said, correct?

19 A. I testified why I was asking for the accommodations.

20 Q. But what I'm saying there is that's what you said,
21 correct?

22 A. That's what I wrote.

23 Q. You wrote that, correct?

24 A. Yes.

25 Q. Nobody else wrote it, not your doctor; you wrote that,

1 correct?

2 A. Correct.

3 Q. Turning to the next page on the top...

4 MR. MOORE: If we could just highlight that first
5 little portion up there, the two sentences.

6 BY MR. MOORE:

7 Q. And then you go on to say, "I need accommodations in the
8 classroom so I can absorb the substantial amount of
9 information presented in medical school to then apply those
10 concepts clinically." Correct?

11 A. Yes.

12 Q. Now, then in the letter you talk about your cochlear
13 implant and I think you've testified before that you were
14 hoping that would provide some additional assistance but you
15 just weren't sure at that point.

16 And then in the next paragraph you talk about the
17 difference between one-on-one, small groups and large groups.

18 MR. MOORE: And I'd like to highlight that. The next
19 paragraph down Kris; no, no -- right there. Thank you very
20 much.

21 BY MR. MOORE:

22 Q. You say: In general, hearing-impaired individuals
23 function better one-on-one and in small groups and have more
24 difficulty in large groups. Therefore, there is more of a
25 need -- there is more need for accommodations in those

1 settings.

2 When you say "in those settings," were you referring to
3 large groups?

4 A. Yes.

5 MR. MOORE: Okay. Now, if we can highlight the next
6 portion where it says "Regarding the requested
7 accommodations"?

8 BY MR. MOORE:

9 Q. Now, again you repeat what you had requested in the
10 previous e-mail, correct, the accommodations that you were
11 demanding, correct?

12 A. The accommodations I was requesting.

13 Q. Okay. Very good. And then there's a paragraph down
14 there that says, "I believe these are in accordance with
15 Dr. Backous's recommendation." And then you say, "Real-Time
16 captioning and interpreting (in my case Cued Speech or oral)."
17 And I'm assuming you're talking about oral interpretation with
18 sign support, correct?

19 A. At that point I didn't know what I would be using.

20 Q. But that's what you're referring to there, correct?

21 A. Yeah.

22 Q. You knew what oral -- oral interpretation with sign
23 support was, didn't you?

24 A. Not really.

25 Q. You didn't know what it was but you said "in my case cued

1 speech or oral"?

2 A. I know what an oral interpreter is.

3 Q. You knew what an oral interpreter was, correct?

4 A. Yes.

5 Q. So what you were saying, "There's real-time captioning
6 and interpreting (in my case Cued Speech or oral) are
7 generally considered interchangeable, based on the client's
8 preference and availability. The largest fundamental
9 difference between the two rests on the capacity to change
10 locations quickly." Now you wrote that, correct?

11 A. Yes.

12 Q. It wasn't your doctor, right?

13 A. Right.

14 Q. That was you, correct?

15 A. Yes, that was me.

16 MR. MOORE: Now, I'd like to highlight the last
17 portion of that letter.

18 BY MR. MOORE:

19 Q. Now, this is the portion where you're talking about
20 the -- regarding the reasonable nature of the requested
21 accommodations. Do you see that portion, sir?

22 A. Yes.

23 Q. And it appears to me that you are talking about the
24 accommodations that you had received at your previous -- in
25 your previous education, correct?

1 A. Yes, sir.

2 Q. And then at the end of the second paragraph there, you
3 say, "I do believe that an FM system would be useful for my
4 medical studies," correct?

5 A. I did believe it was useful.

6 Q. And you said that, correct? That's your statement,
7 correct?

8 A. Yeah.

9 THE COURT: If this is a good breaking point, we
10 can --

11 MR. MOORE: Yes, your Honor.

12 THE COURT: -- take the mid-afternoon break now.
13 Let's reconvene at 3:25.

14 We're in recess.

15 (Jury out and recess taken at 3:10 p.m.)

16 (At 3:28 p.m. on August 23, 2013, with counsel for the
17 parties, the plaintiff, and the defendant's representative
18 present, and the jury NOT present, the following proceedings
19 were had:)

20 MICHAEL ARGENYI, PREVIOUSLY SWORN, RESUMED THE STAND

21 THE COURT: Anything we need to discuss before the
22 jury comes in?

23 MS. VARGAS: Not from the plaintiff, your Honor.

24 MR. MOORE: Nothing from the defendant, your Honor.

25 THE COURT: Please bring in the jury.

1 (Jury in at 3:29 p.m.)

2 THE COURT: Mr. Moore, you may continue with your
3 cross-examination.

4 MR. MOORE: Thank you, your Honor.

5 CROSS-EXAMINATION (Cont'd.)

6 BY MR. MOORE:

7 Q. Mr. Argenyi, I'd like to direct your attention to Exhibit
8 No. 6. And again we'll bring it up on the screen. And we
9 talked about this. I believe this is already in evidence.

10 THE COURT: It is.

11 BY MR. MOORE:

12 Q. You talked about this on direct examination. This is the
13 letter sent to you by Dr. Kavan explaining to you the
14 accommodations that Creighton would provide for your first
15 year of medical school, correct?

16 A. Yes.

17 Q. Correct?

18 A. I said yes.

19 Q. You received a copy of this letter, correct?

20 A. Right.

21 Q. And, sir, if you'd turn to --

22 MR. MOORE: If we could highlight right in the first
23 paragraph under Lectures, please?

24 BY MR. MOORE:

25 Q. So as I understand it, Creighton offered you for lectures

1 a first row seat, an FM system, as well as a note-taker,
2 correct?

3 A. Correct.

4 Q. And it indicated the university would arrange for you to
5 have a note-taker, giving you a copy of the notes within a
6 reasonable time period after a lecture, correct?

7 A. Right.

8 Q. Did you ever reach out to them to identify a specific
9 note-taker?

10 A. No.

11 Q. Instead you used just the note-taking service that the
12 university provided, correct?

13 A. Correct.

14 Q. And that was available to all students.

15 A. All students who were in it, yes.

16 Q. So if a student wanted that service, they could be
17 involved in that, correct?

18 A. Right.

19 Q. But in this particular letter, they're offering a
20 note-taker for you, correct?

21 A. Right.

22 Q. And we've been over this letter already so I don't want
23 to waste too much time on it but I would like to go to the
24 second page. And I'd like to go to the second to the last
25 paragraph where it starts --

1 MR. MOORE: No, one more down. Thank you.

2 BY MR. MOORE:

3 Q. Then the last sentence on that letter said, "We will plan
4 to meet with you periodically to assess these accommodations."
5 Do you see that?

6 A. Yes.

7 Q. Now, at that time, on June 23rd, did you have any reason
8 to question that statement, that they would periodically
9 assess your accommodations?

10 A. No.

11 Q. Now, if I could direct your attention, sir, to Exhibit
12 No. 7? And this is the e-mail that you sent to Dr. Kavan on
13 July 15th in response to his June 23rd letter, correct?

14 A. That is correct.

15 MR. MOORE: And if we could blow up the second and
16 third paragraph, the larger paragraphs, both of them.

17 BY MR. MOORE:

18 Q. Now, you indicate there, as you said before, that you
19 noted that they were different than what they [sic] were used
20 to but you would give them a wholehearted try, correct?

21 A. Absolutely.

22 Q. And should they be inadequate, you would let Dr. Kavan
23 know immediately and would work with him and his office to
24 devise an adequate solution, correct?

25 A. Uh-huh.

1 Q. So was this your intent at that point to try the
2 accommodations offered by Creighton University, and then if
3 they weren't working to work with Dr. Kavan to come up with
4 some alternative accommodations that may work?

5 A. Absolutely.

6 Q. So that was your intent on July 15th of 2009, correct?

7 A. Yes.

8 Q. Now, also in that letter you specifically indicate that
9 you are wondering whether the FM system would be purchased by
10 Creighton, correct?

11 A. Yes.

12 Q. And you got an answer to that, that Creighton would be
13 paying for it?

14 A. Correct.

15 Q. You also identified a specific FM receiver that can be
16 ordered that would work specifically with the cochlear implant
17 that you had.

18 A. I recommended one that my audiologist had found.

19 Q. You identify your audiologist in here and said she'd be
20 happy to help in ordering and education on how to use it,
21 correct?

22 A. Yes.

23 MS. BALUS: Your Honor, may I approach the witness?

24 Exhibit 210. This is not in evidence.

25 THE COURT: What is the number for identification

1 purposes?

2 MS. BALUS: 210.

3 THE COURT: And you may approach.

4 MS. BALUS: Thank you.

5 BY MR. MOORE:

6 Q. Mr. Argenyi, do you recognize Exhibit 210?

7 A. I do.

8 Q. And what do you recognize this as?

9 A. I recognize it as the FM system that I identified and
10 gave the information to Dr. Kavan.

11 Q. So these are e-mails you exchanged with Dr. Kavan
12 regarding the specific FM system that would work with your
13 cochlear implant?

14 A. Correct.

15 MR. MOORE: At this time, your Honor, I would like to
16 offer Exhibit 210.

17 MS. VARGAS: No objection.

18 THE COURT: Exhibit 210 is received.

19 BY MR. MOORE:

20 Q. And it appears that Dr. Kavan sent you an e-mail on
21 July 29th indicating that they had looked for equipment but
22 were wondering if you could give the details on what you would
23 need.

24 MR. MOORE: Then if you would enlarge this portion,
25 Kris, the e-mail -- from here down.

1 BY MR. MOORE:

2 Q. Now, it indicates there that you were out of the country
3 at that point; is that right?

4 A. That's correct.

5 Q. And -- but then you identify the specific FM system that
6 would work with your cochlear implant, correct?

7 A. Correct.

8 Q. And you also give the name of your audiologist as well as
9 the contact information for the Phonak representative to get
10 more information to Creighton.

11 A. Correct.

12 Q. After Creighton received this, they installed the FM
13 system for you, correct?

14 A. Yes.

15 Q. And they purchased the FM system that you identified,
16 right?

17 A. Yes.

18 Q. And that was specifically purchased for you as an
19 accommodation, correct?

20 A. Correct.

21 Q. Again in this e-mail you're not indicating that you don't
22 believe the accommodation is -- that you don't believe the
23 accommodation is adequate, you're not saying that FM system
24 won't work, correct?

25 A. Correct.

1 Q. After you sent this e-mail but before you started class,
2 you contacted a lawyer, correct?

3 A. Yes.

4 Q. And after you contacted that lawyer, your lawyer
5 contacted Creighton University, correct?

6 A. Yes.

7 Q. And your lawyer asked for a meeting with Creighton to
8 discuss the accommodations you requested, correct?

9 A. Uh-huh, that's right.

10 Q. At that point, you believed because you were not getting
11 everything you demanded in your April e-mail you weren't going
12 to get effective communication.

13 A. I'm sorry, can you restate?

14 Q. At that point, before classes started when you called a
15 lawyer and the lawyer set up the meeting, you believed at that
16 point if you didn't get everything that you asked for in your
17 April e-mail, you wouldn't be receiving effective
18 communication.

19 A. I didn't -- I had expressed my concerns and I was still
20 concerned.

21 Q. So concerned that you believed you needed to call a
22 lawyer, correct?

23 A. I thought that might be okay.

24 Q. At that point you believed you were entitled to
25 everything you requested in your April e-mail.

1 A. I didn't know what entitlement would be.

2 Q. Do you believe you needed it?

3 A. I did.

4 Q. Do you believe the law required it?

5 A. I did.

6 Q. So you believed you were entitled to it.

7 A. If that's what that means.

8 Q. And that was even before your first class started in
9 medical school, correct?

10 A. Yes.

11 Q. Now, the meeting that your lawyer asked for happened two
12 days before class started, right?

13 A. It was close.

14 Q. Around two days.

15 A. Around it.

16 Q. And you explained to the jury on direct examination that
17 it was Dr. Kavan, Wade Pearson, Amy Bones from Creighton, and
18 Dianne DeLair and you. Is that what you said?

19 A. That's what I said.

20 Q. But there was another person there.

21 A. I believe there was another person from the Nebraska
22 Advocacy Services.

23 Q. You also had an advocate there, right?

24 A. Yes.

25 Q. So you had Dianne DeLair, your lawyer, and another

1 advocate, not just you and Dianne DeLair.

2 A. Right.

3 Q. At that meeting your lawyer said Creighton must provide
4 the accommodations that Mr. Argenyi requested in his April
5 e-mail, didn't they?

6 A. If I recall, yes.

7 Q. And you made clear -- you and your lawyer and your
8 advocate made clear that if you didn't get everything that you
9 demanded in that April e-mail, that you wouldn't receive
10 effective communication.

11 A. It would have not been effective.

12 Q. So at that point, no matter what would have happened from
13 that point, no matter what would have happened, if you didn't
14 get what you wanted in that April e-mail, you weren't going to
15 receive effective communication.

16 A. It would not be effective.

17 Q. From that day until today in court, you haven't changed
18 your opinion, right?

19 A. Right.

20 Q. Do you believe -- well, let me withdraw that question.

21 Let me ask you this: When you get your lawyers and you
22 bring your advocate in and you demand what you originally
23 demanded without even trying the accommodations that Creighton
24 offered, that's not a wholehearted try, is it?

25 A. It is a wholehearted try.

1 Q. That's a wholehearted try?

2 A. Yes, it is.

3 Q. You had a smile there. You don't believe that's a
4 wholehearted try, do you?

5 A. I do believe it is.

6 Q. All right, sir. At that meeting Dr. Kavan and Wade
7 Pearson indicated they believed the accommodations offered by
8 the medical school at that time would provide effective
9 communication and at that point that's what they were going to
10 offer, right?

11 A. Correct.

12 Q. So you started school with those accommodations.

13 A. Right.

14 Q. You had an FM system.

15 A. Yes.

16 Q. You used note-takers.

17 A. Right.

18 Q. You had the opportunity to get a note-taker that
19 Creighton would -- would pay for as well.

20 A. Correct.

21 Q. But you didn't take them up on that opportunity.

22 A. Correct.

23 Q. They wanted you to sit in the front row, right, of the
24 lectures?

25 A. Yes.

1 Q. And just so I understand, before class started, you were
2 able to look at the PowerPoints and review the PowerPoints and
3 study them before you went to class.

4 A. That's correct.

5 Q. Now, at that meeting, two days before you began medical
6 school, around there, you didn't have an interpreter there,
7 did you?

8 A. That's correct.

9 Q. You didn't have CART, did you?

10 A. That's right.

11 Q. You didn't bring any accommodations, correct?

12 A. That's right.

13 Q. So you started your first year with all the
14 accommodations that Creighton was providing to you. And I
15 think you indicated that you were struggling; is that right?

16 A. Uh-huh; that's right.

17 Q. Let's look at Exhibit 9. That's already in evidence and
18 I think we can bring it up on the screen. Now, this is the
19 letter -- excuse me, this is the e-mail that you sent to
20 Dr. Kavan on September 1st, correct, after you began law
21 school -- medical school? I said it again.

22 A. That's right.

23 Q. And you'd been in class approximately two weeks.

24 A. We started -- we had orientation the week before the
25 17th, so probably about three weeks.

1 Q. But was the -- was it the first week of class or did you
2 have some orientation in there?

3 A. We had some orientation before the first week of class.

4 Q. You had some orientation and then started class.

5 A. Right.

6 Q. So let's split the difference. Let's say two and a half
7 weeks; is that fair?

8 A. Yeah.

9 Q. I'd like to take a look at this exhibit one paragraph at
10 a time.

11 Let's take a look at the first paragraph starting with
12 "at this time".

13 In the first paragraph you say, "At this time I need to
14 inform you that the accommodations being provided are
15 inadequate and would like to formally request the
16 accommodations as outlined in my April 21st letter and at the
17 August 12th meeting." You see that?

18 A. Yes.

19 Q. So those were the same things that you asked for in the
20 meeting with your lawyers present, correct?

21 A. Yes.

22 Q. That you had already determined at that point were the
23 only way you were going to have effective communication.

24 A. Yes.

25 Q. So you're just repeating what you said in that meeting on

1 August 12th, right?

2 A. Uh-huh, that's right.

3 Q. Now, let's look at the second paragraph. It starts out
4 by saying: The accommodations are inadequate as evidenced by
5 the level of stress and fatigue I'm experiencing, as well as
6 the amount of information I am missing. I am missing on
7 average a decent chunk of lectures. Even when I'm able to
8 follow the lecture, the intensity of listening to lecturers
9 causes fatigue where I am unable to function properly for the
10 rest of the day, significantly impacting my ability to study.
11 I am also unable to follow conversations effectively any time
12 my *[sic]* classmates ask questions or there is full class
13 discussion.

14 I think you described your first few weeks or your first
15 year of medical school kind of like I described it in the
16 opening statement. You said it's like trying to take a drink
17 out of a fire hydrant. Is that what you said?

18 A. Yes, it's like that.

19 Q. So there's a tremendous amount of information coming at
20 all first year medical students, right?

21 A. Yes. Everybody said it's like drinking from a fire hose
22 with a straw. For me it was like drinking from a fire hose
23 with one of those coffee stirrers.

24 Q. And you believe that the stress and fatigue you were
25 experiencing had to be because you didn't have your

1 accommodations.

2 A. Absolutely.

3 Q. Had you been in medical school before?

4 A. No.

5 Q. And is it fair for me to say that this was the most
6 challenging academic time of your life regardless of whether
7 you had accommodations or not?

8 A. Yes.

9 Q. Looking at that last sentence -- well, let me ask you
10 this: Did you expect to suffer from stress and fatigue going
11 to medical school?

12 A. Not like this.

13 Q. You did, didn't you? You didn't expect that?

14 A. No.

15 Q. You didn't -- you thought you'd just have no stress,
16 fatigue, you'd go right through; is that what you're --

17 A. No. That was nothing like I'd experienced.

18 Q. In the last sentence, you say: I'm unable to follow the
19 conversations effectively any time classmates ask questions or
20 there is a full class discussion.

21 And is that -- why is that? What was causing that?

22 A. Because I would not be able to see the people who were
23 speaking or lip-read them.

24 Q. You talk a lot about a bouncing ball. That's the
25 analysis you've been using. And I think we've all played with

1 our kids with a bouncing ball. And as you get older, you have
2 trouble keeping up with your kids. You ask them to stop
3 bouncing the ball for a minute so I can catch up.

4 Did you ever ask your professor to repeat the questions
5 that the students asked?

6 A. I did.

7 Q. And they ignored you?

8 A. Yeah. They didn't ignore me but it didn't stay
9 consistent.

10 Q. Did you remind them when they didn't repeat the
11 questions?

12 A. Yes.

13 Q. Are you telling the jury they ignored you when you asked
14 this?

15 A. I'm saying that they teach the way that they do. It's
16 difficult for them to remember to ask you to do that every
17 time.

18 Q. Have you ever seen at conferences when speakers are
19 speaking they ask speakers to repeat the questions? Have you
20 seen that?

21 A. I've seen that.

22 Q. So in that large setting, did you have a problem with
23 reminding your professors to repeat the questions the students
24 were asking?

25 A. It wasn't consistent.

1 Q. That's not what I asked. I asked did you believe you
2 should not have had to ask the professors to repeat the
3 questions?

4 A. That's different from what you asked before.

5 Q. I'll ask you to --

6 A. I'm not sure I understand the question.

7 Q. Okay. Did you believe you should not have to ask
8 professors to repeat the question? Did you believe that was
9 not your role?

10 A. No.

11 Q. So you believed that that was your role.

12 A. I believe it's somewhere in between.

13 Q. So am I to understand that you were unable to follow your
14 classmates because the professors would not repeat the
15 questions after you asked them to do that?

16 A. No, because some of them I could not speech read.

17 Q. The professors?

18 A. Right.

19 Q. What you're saying is you couldn't understand your
20 professors so they would repeat the questions but you didn't
21 understand them because you couldn't understand the professor.

22 A. I couldn't -- I couldn't understand everyone in the class
23 100 percent.

24 Q. 100 percent.

25 A. Right.

1 Q. Sir, do you believe you could retain 100 percent of the
2 information that was given to you in medical school?

3 A. Retaining is not the same as understanding it.

4 Q. I understand that. But I'm asking you do you think you
5 could retain 100 percent of the information?

6 A. No.

7 Q. Let's take a look at the second paragraph if we could.
8 I'm sorry, the third.

9 Do you think you can absorb every single bit of
10 information from a class?

11 A. No.

12 Q. You didn't tell me that in your deposition?

13 A. I'm sorry?

14 Q. Do you recall that I took your deposition?

15 A. Yes.

16 Q. And was your lawyer there?

17 A. Yes.

18 Q. And your lawyer was making objections when I was asking
19 questions?

20 A. Yeah.

21 Q. Okay. I'd like to look at page 182, line 16 to 21 of the
22 deposition that I took of you. I asked you: You can't
23 possibly absorb every single bit of information from class,
24 can you?

25 You answered: Some of the students seem to be able to do

1 it.

2 Can you?

3 And you said: If I had access to the information.

4 Do you see that?

5 A. I see that.

6 Q. Do you -- you appear to be saying there that if you had
7 access to that information that you could absorb every single
8 bit of information. Is that what your expectation is?

9 A. My expectation is not that I would absorb and know every
10 piece of information but I would have access to all of that
11 information and, hence, the potential.

12 Q. Now, looking back at Exhibit 9 again, the third
13 paragraph, you say: I'm relying on the Note Service which,
14 while very helpful, has been insufficient and has me at
15 minimum of one day behind my peers in studying as I have to
16 wait for the notes to come out the next day or even after a
17 full weekend which is critical. This was especially
18 noticeable when at the last MDQI I missed questions -- excuse
19 me, the last MDQ I missed questions because it covered
20 materials [sic] that had not yet been covered by the Note
21 Service and possibly [sic] left out notes from the earlier
22 lectures.

23 Do you see that?

24 A. I see that.

25 Q. So are you saying that the only questions you missed on

1 the MDQ are the ones that weren't in the notes?

2 A. No. I also said possibly left out of the notes.

3 Q. So they could have been left out, they could have been
4 in, you just don't know.

5 A. We were not allowed to write down what the questions
6 were, so I couldn't confirm.

7 Q. But you seem -- even though you can't remember that and
8 you weren't allowed to write down the questions, you seem to
9 be saying that you missed questions on the MDQ because of lack
10 of the notes from the note-taker.

11 A. Yes.

12 Q. Now, you also say: I'm also suffering in anatomy lab due
13 to the high noise level. The FM system only amplifies the
14 general noise level, as well as quiet *[sic]* voices,
15 essentially negating any potential value in amplification,
16 okay? Did you say that?

17 A. Yes.

18 Q. You say, "Finally, the videos (Unnatural Causes) in
19 Ethics and the dissection videos in anatomy are inaccessible
20 because they are not closed-captioned and I have no
21 interpreter to relay the information." Do you see that?

22 A. I do.

23 Q. And I believe you testified on direct examination that
24 Dr. Kavan failed to respond to this e-mail. Was that your
25 testimony, that he was -- failed to respond to it for three

1 weeks; is that correct?

2 MS. VARGAS: Objection, your Honor. That's not what
3 the testimony was.

4 THE COURT: The witness may clarify what his
5 testimony was.

6 A. I testified it was sometime -- it was not that week or
7 the week after but 15 days later.

8 BY MR. MOORE:

9 Q. I guess you were claiming that Dr. Kavan didn't do
10 anything for about two weeks. Is that what you're saying?

11 A. I'm saying I didn't get a response for two weeks.

12 Q. Your professor in anatomy lab was Dr. Quinn, correct?

13 A. Yes.

14 Q. After you sent out this e-mail, Dr. Quinn indicated you
15 should move to the closest lab table as close to him as
16 possible, right?

17 A. I'm sorry, I do not know what you're talking about.

18 Q. So Dr. Quinn never told you that Creighton was offering
19 you the ability to go to a lab table as close to him as
20 possible?

21 A. What lab table is he talking about? I was assigned to a
22 group with a body so, I mean, there's --

23 Q. In the middle. There's different rooms, right?

24 A. Oh, yes, if there was a live demonstration, yes.

25 Q. Right. And if there was a live demonstration, Dr. Quinn

1 would be in the middle, correct?

2 A. Correct.

3 Q. So the response to that request was to move you to the
4 middle so when there was a live demonstration, you would be
5 close to the professor to be able to use visual cues like
6 reading lips, context, those things, correct?

7 A. Correct.

8 Q. So that was responded to, wasn't it?

9 A. What do you mean "responded to"?

10 Q. You were offered that in response to this e-mail, weren't
11 you?

12 A. I'm sorry, what are you looking at?

13 Q. We were looking at Exhibit 9, the e-mail that you sent on
14 September 1st. And we're specifically referring to the
15 difficulty you said that you were having in anatomy lab. And
16 you said that Dr. Kavan didn't respond for almost two weeks.

17 And what I'm saying is Dr. Kavan did respond because
18 Dr. Quinn, in response to that, offered you to move into the
19 middle room closest to him so you could get lip-reading and
20 the other visual cues, correct?

21 A. They did offer that. I never understood the reason why.

22 Q. Well, you sent this e-mail, didn't you?

23 A. Yes.

24 Q. You were having difficulty you said, correct?

25 A. Yes.

1 Q. And then afterwards they made this offer, correct?

2 A. I was having trouble in the general room as well.

3 Q. In the general room?

4 A. Yes. The main room --

5 Q. What I'm saying -- I don't mean to interrupt. I
6 apologize, sir. What I'm asking is you said you didn't know
7 why Dr. Quinn offered for you to go in the middle room and
8 what I'm saying is you sent this e-mail, Dr. Quinn made the
9 offer, doesn't it make sense that it was in response to your
10 e-mail?

11 A. It makes sense.

12 Q. Okay. Now, you also mentioned some closed-captioning
13 issues, some of the videos were not closed-captioned.

14 A. Correct.

15 Q. There was a response to that as well.

16 A. Yes, there was.

17 Q. So there was a response to that, there was a response to
18 the anatomy lab concern. The only delay as I understand of
19 that two-week period was regarding the note service, right?

20 A. I'm not sure when I had access to the closed-captioning
21 in the videos used in the ethics course.

22 Q. Well, they responded to that concern by trying to get
23 those closed-captioned, correct?

24 A. I talked to Dr. Rentmeester.

25 Q. And Dr. Rentmeester was working on that.

1 A. Yes.

2 Q. Although it didn't come through Dr. Kavan,
3 Dr. Rentmeester was trying to address your concern, right?

4 A. I'm sorry, I'm not clear on the text.

5 COURT REPORTER: Could you repeat, please?

6 BY MR. MOORE:

7 Q. Sure. So even though the response didn't come from
8 Dr. Kavan, Dr. Rentmeester was addressing your concern.

9 A. Yes, because I had talked with her.

10 Q. Okay. So when we look at -- well, let's -- let me ask
11 you a few other questions. Those were the only specific three
12 things that you referenced you were having trouble with in
13 this e-mail, correct?

14 MS. VARGAS: Objection, your Honor. Could we show
15 the witness the entire exhibit rather than an exhibit --

16 MR. MOORE: I think he has a copy up there.

17 MS. VARGAS: If he does, that's fine.

18 THE COURT: Put the whole thing up on the screen.

19 MR. MOORE: Sure. Go ahead.

20 Can you enlarge the e-mail, the entire e-mail from top to
21 bottom? Thank you.

22 BY MR. MOORE:

23 Q. So as I understand the e-mail, you talk in the first
24 paragraph about your stress and fatigue generally, and then in
25 the next paragraph, you talk about those three concerns, okay?

1 But you don't -- you don't mention any other specific concerns
2 in that e-mail, do you?

3 A. Yes, I do.

4 Q. And what do you mention?

5 A. Meaningful participation and independence as a student.

6 Q. That's pretty broad, isn't it?

7 A. I don't know if that's broad to you.

8 Q. Meaningful participation and independence as a student?

9 A. I knew the accommodations that were offered would not
10 allow me to participate.

11 Q. Okay. But what I'm talking about is you give three of
12 examples of the problems you were having. Did you not want to
13 include as much information in this e-mail as possible? Did
14 you want to hold stuff back?

15 A. No.

16 Q. Okay. So you wanted to make sure Creighton knew why you
17 were struggling, correct?

18 A. Right.

19 Q. Now, as I read this e-mail, the only reference to the FM
20 system is that you were suffering in anatomy lab because of
21 the high noise level, right?

22 A. Correct.

23 Q. And in the anatomy lab, you have a lot of noise going on,
24 am I right, like sawing and things like that?

25 A. Right.

1 Q. Which you wouldn't have in a lecture, right?

2 A. You still have background noise, just not high.

3 Q. There's no, like, cadavers in a lecture hall, right, in
4 the -- you're not cutting bones and things like that, right?

5 A. Right.

6 Q. Now, I believe on your direct examination you said that
7 it was -- you were so -- well, you were not getting effective
8 communication in small groups and it was so bad that you
9 stopped going to that class. Was that in a small group or
10 that was in a lecture that you stopped going to class?

11 A. I testified that one of my small groups was led by a
12 professor whose accent was so strong that I did not -- I could
13 not understand his lecture so I did not attend some of them.

14 Q. Are small groups mandatory?

15 A. Yes.

16 Q. No one said anything when you skipped class even though
17 it was mandatory.

18 A. Small groups are mandatory. The lectures are not
19 mandatory. I'm talking about the lectures.

20 Q. Okay. I'm sorry, I'm confused. I apologize, sir. So
21 you stopped going to a lecture or you stopped going to a small
22 group?

23 A. I stopped going to a lecture when it was that specific
24 professor because I could not understand him.

25 Q. Okay. So even though you stopped going to class it was

1 so bad, you didn't include that in your September 1st e-mail,
2 right?

3 A. Let me read the e-mail. I described that I was missing a
4 decent chunk of the lectures.

5 Q. I understand that. But you don't mention anything about
6 a class that you were -- decided not to go to anymore because
7 you weren't receiving effective communication. There's
8 nothing in that e-mail about that, right?

9 A. I don't remember when I had that specific professor for
10 that so...

11 Q. So what? You don't remember if it was before or after
12 September 1st?

13 A. Right.

14 Q. Going back to the lab, you were also -- your team was
15 assigned a specific teaching assistant, correct, Brianna
16 Scott?

17 A. Correct.

18 Q. And that again was done by Dr. Quinn after your
19 September 1st e-mail, correct?

20 A. I believe it was about that time, yes.

21 Q. And did Brianna Scott indicate she was there to provide
22 you additional assistance?

23 A. She did. She was already assigned to our class; she was
24 asked to specifically stay there.

25 Q. Right. So she was again assigned specifically to your

1 group to assist you, correct?

2 A. Right.

3 Q. So that's another way Dr. Kavan responded to your e-mail,
4 right?

5 A. Right.

6 Q. Now, the only place you refer to an FM system is in the
7 lab. You do not anywhere in this e-mail indicate the FM
8 system has not been working in a lecture, right?

9 A. Right.

10 Q. Now, the closed-captioning that you refer to in this
11 e-mail, closed-captioning is the words that appear on the
12 bottom of a video; is that right?

13 A. Correct.

14 Q. Closed-captioning is not real-time transcription, right?

15 A. Right. Because I was referring to --

16 Q. I just want to understand. Closed-captioning is
17 different than CART.

18 A. In this e-mail, yes.

19 Q. In some other e-mail it's not?

20 A. When I wrote this, yes.

21 Q. But that's your understanding, that closed-captioning is
22 different than CART, right?

23 A. Yes.

24 Q. I mean, otherwise you wouldn't have put that in this
25 e-mail, right?

1 A. Right.

2 Q. Now, both you and your mother in your direct examination
3 testimony said that in the first few weeks that you were close
4 to failing. Am I right? Did you say that?

5 MS. VARGAS: Objection, your Honor, that's not the
6 witness's testimony.

7 THE COURT: Then the witness may clarify that that is
8 not his testimony. You may respond.

9 A. I did not say that I was failing. I said that I was
10 struggling.

11 BY MR. MOORE:

12 Q. But you have said -- in fact, you did say in your
13 deposition that you were close to failing. Didn't you say
14 that?

15 A. With the amount of information that I was missing, I
16 would have been.

17 Q. So are you telling the jury that in the first few weeks
18 you were close to failing without the accommodations that you
19 demanded?

20 A. No, I'm saying that I did not have access to the
21 information, and since the concepts build on each other
22 through the semester, I would have eventually had so many gaps
23 in my knowledge that I would have not been able to do well.

24 Q. That's not what you said, is it? You said you were
25 failing in the first few weeks?

1 MS. VARGAS: Objection, that's not what the witness
2 testified.

3 MR. MOORE: Okay. I'll withdraw the question right
4 now, your Honor.

5 BY MR. MOORE:

6 Q. I'd like to refer you again to your deposition,
7 Mr. Argenyi. Again you were under oath at this deposition,
8 correct?

9 A. Yes.

10 Q. And your lawyers were there protecting your interests,
11 correct?

12 A. Correct.

13 Q. And I'm going to direct your attention to your
14 deposition, page 83-21 through 84-4. I asked you:

15 Question: Do you believe that without CART in the
16 lecture that you could have successfully completed your first
17 year of medical school?

18 Answer: I absolutely believe I would have failed.

19 Question: Why?

20 Answer: Because I was close enough in the first few
21 weeks without it.

22 Question: You were close to failing the first few weeks?

23 Answer: Yes.

24 Question: And how do you know that?

25 Answer: Because my test scores were going down each week

1 and people were talking about concepts and I had no idea what
2 they were.

3 Question: Okay.

4 MR. MOORE: Take that off, Kris.

5 BY MR. MOORE:

6 Q. So indeed, you said you were close to failing in the
7 first few weeks of medical school, right?

8 MS. VARGAS: Objection, that is not what his
9 testimony was.

10 THE COURT: Well, and the witness may respond and
11 clarify what his testimony in fact is. You may respond.

12 A. I said that I was struggling with accessing the
13 information and because of that, I had gaps in my knowledge.

14 MR. MOORE: Kris, can you put that back up again?
15 Second page.

16 BY MR. MOORE:

17 Q. Again you say there:

18 Answer: Because I was close enough in the first few
19 weeks without it.

20 Question: You were close to failing the first few weeks?

21 Answer: Yes.

22 Did you say that?

23 A. I said that there.

24 Q. You said that there; is that what you just said?

25 A. Yes.

1 Q. Are you saying something different now?

2 A. No. I'm saying that I was struggling with accessing the
3 information.

4 Q. Okay. Now, before -- well, let me ask you this: On your
5 direct examination I believe you said you were having a
6 particular problem in anatomy without all the accommodations
7 that you requested. Is that right?

8 A. I'm sorry, clarify.

9 Q. Yeah. Did you testify on your direct examination that
10 you were having particular problems in your anatomy class due
11 to the lack of accommodations?

12 A. Yes.

13 Q. Now, am I correct that you took both some quizzes which
14 are called -- I believe it's multidisciplinary quizzes and
15 examinations with the accommodations that Creighton was
16 providing before you secured your own CART and interpreters?

17 A. Correct.

18 Q. Just so we clarify it for the jury, as I recall, you
19 started providing your own interpreters and CART on
20 September 28th, right?

21 A. Yeah.

22 Q. So before September 28th, I believe you had a written
23 anatomy exam, anatomy practical exam, and just -- you had
24 those two but I also want to clarify, what is an MDQ?

25 A. An MDQ is a multidisciplinary quiz. I believe there was

1 one every week or every two weeks that would cover different
2 topics from different classes.

3 Q. So, for example, in anatomy and molecular and cellular
4 biology, you had two MDQs before September 28th; is that
5 right?

6 A. Yeah.

7 Q. And you had one molecular and cell biology written exam,
8 correct?

9 A. Yes.

10 Q. Now, on your anatomy exam again that you took with the
11 accommodations offered by Creighton where you said you were
12 having a particular problem, you got an 88 percent on your
13 first written exam; is that correct?

14 A. If that's what the record shows. I don't remember my
15 grades.

16 Q. I'm going to go ahead and bring an exhibit up --

17 MS. VARGAS: Not for the jury, please. Your Honor, I
18 have an objection.

19 THE COURT: Are you requesting a sidebar?

20 MS. VARGAS: Yes, please.

21 THE COURT: All right.

22 (Bench conference on the record.)

23 MS. VARGAS: Mr. Moore said he was going to bring up
24 an exhibit and I did not want an exhibit brought up before the
25 jury before proper foundation was established.

1 MR. MOORE: We couldn't deal --

2 MS. VARGAS: Should we deal with it?

3 MR. MOORE: Right now I'm just going to use it to
4 refresh his recollection. I haven't offered it. I don't know
5 if I'm going to offer it if you want to object to it.

6 THE COURT: I have no idea what exhibit you're
7 talking about.

8 MS. VARGAS: To the extent he's going to offer
9 Defendant's Exhibit 205, plaintiff has objection to providing
10 this evidence which is obviously altered by unknown persons,
11 which is not maintained in any discernible way, which has
12 portions of this exhibit where some of the information is
13 literally cut off; many of these are entirely undated. All of
14 the information isn't even there.

15 And on top of that, the relevance of Mr. Argenyi's grades
16 as they're demonstrated here for the time when he was using
17 accommodations that he paid for himself are hardly relevant to
18 the question of whether he understood what was going on in
19 class or not.

20 MR. MOORE: We're talking about the ones before.

21 MS. VARGAS: Do you have dates? There are no dates
22 on here.

23 MR. MOORE: I'm using it to refresh his recollection.

24 MS. VARGAS: He testified he didn't know what his
25 grades were.

1 MR. MOORE: That's why I intend to refresh his
2 recollection, your Honor.

3 MS. VARGAS: How is this going to refresh his
4 recollection when it's undated and altered?

5 MR. MOORE: I haven't offered it, yet.

6 THE COURT: Obviously, it cannot be shown to the jury
7 so when you --

8 MR. MOORE: Sure.

9 THE COURT: -- when you talked about bringing up an
10 exhibit, I thought you meant bringing it up to the witness, to
11 the plaintiff.

12 MR. MOORE: Uh-huh.

13 THE COURT: And you can do that either physically or
14 do it by showing it to him alone and we'll block out the jury
15 monitors so that they can't see it. You can ask him and if it
16 refreshes his memory, fine; if not, it doesn't.

17 I guess while we're here I'll mention on the grades
18 issue, I have not precluded the defendant from introducing
19 evidence of the plaintiff's grades. And I know that goes to
20 the issue of whether certain accommodations were necessary or
21 not necessary. I appreciate the point you're raising about
22 certain grades coming about after he provided his own
23 accommodations so the relevance of that will be something we
24 can debate.

25 MS. VARGAS: Your Honor, I just want to be clear. I

1 also have some serious objection to the state of these records
2 that he is supposedly offering to the extent they are visibly
3 altered with things handwritten on them, with dates removed,
4 it has comments of professors literally cut off in the middle
5 of the comment, in the middle of a word. When this evidence
6 is obviously unreliable, it should not be presented to a jury,
7 especially when there's questionable relevance.

8 THE COURT: Right now there is no offer and it will
9 not be shown to the jury at this juncture but counsel may use
10 it in an attempt to refresh the witness's memory.

11 (End of bench conference.)

12 MR. MOORE: May I have a moment, your Honor?

13 MS. BALUS: May I approach, your Honor?

14 THE COURT: Yes, you may.

15 MR. MOORE: May I continue, your Honor?

16 THE COURT: You may.

17 MR. MOORE: Thank you.

18 BY MR. MOORE:

19 Q. Mr. Argenyi, you've just been handed a document. And
20 does this document reflect -- let's look at the first page
21 which has Creighton 387 at the bottom.

22 Does this document, the first page reflect your exams --

23 MS. VARGAS: Objection, your Honor, I understood he
24 was going to see if he could refresh his recollection of his
25 grades. That doesn't appear to be the direction he's heading.

1 THE COURT: Well, first, for identification purposes,
2 does the document have a number? Does it have an exhibit
3 number?

4 MS. BALUS: It's part of 205.

5 MR. MOORE: Part of 205. If it would help, I can
6 tell you what pages it is in 205.

7 THE COURT: That might be good to be sure we have a
8 clear record of what the witness is being asked to look at.

9 MR. MOORE: It is the portion of 205 -- it's made up
10 of a document which on the bottom right-hand corner has
11 Creighton 387, the next page is Creighton 388, the next is
12 Creighton 382, and the final page is Creighton 383.

13 THE COURT: And you are showing plaintiff all four of
14 those pages; is that correct?

15 MR. MOORE: That's correct, your Honor.

16 THE COURT: All right. The objection is overruled.
17 The witness may respond as to whether or not he can identify
18 the document.

19 THE WITNESS: I haven't seen this document.

20 MR. MOORE: Okay.

21 BY MR. MOORE:

22 Q. Do you get copies of your grades, sir?

23 A. We get copies of the grades but I don't remember the
24 format that it looks like.

25 Q. And in what format do you get copies of your grades?

1 A. I'm sorry?

2 Q. In what format do you get copies of your grades? Is it
3 by e-mail? Is it on a computer? Is it a hard copy?

4 A. We got e-mails.

5 Q. Did you save those e-mails?

6 A. I believe I did for a while, but they're on the Creighton
7 address.

8 Q. Have they been deleted?

9 A. I don't have access to that. I don't have access to it
10 from Creighton.

11 Q. You don't have access to them? Did you provide them --
12 did you provide them in this litigation?

13 A. I was not asked to do that.

14 Q. Do you have any reason to question that on your 9-21
15 written anatomy exam that you received an 88 percent?

16 MS. VARGAS: Objection, your Honor.

17 THE COURT: Sustained.

18 MR. MOORE: Well -- You can put the document down.

19 BY MR. MOORE:

20 Q. You recall you took a written anatomy exam on or around
21 9-21 before you secured CART and interpreters. You recall
22 that, don't you?

23 A. I don't.

24 Q. You don't recall?

25 Do you recall how you did in anatomy on that first

1 written examination?

2 A. I recall it went pretty well because it was a lot of
3 review.

4 Q. A lot of review, so you weren't learning new material.

5 A. I wasn't learning any -- I'm sorry, I was learning new
6 material but a lot of the content was also a repeat from
7 previous years.

8 Q. So you'd had anatomy classes before this?

9 A. I did.

10 Q. And where did you take these anatomy classes?

11 A. I took them at North Seattle Community College.

12 Q. North Seattle Community College. You took anatomy. Was
13 that in medical school?

14 A. No.

15 Q. So are you saying that the anatomy class at Seattle
16 Community College is exactly like the anatomy class at
17 Creighton University School of Medicine?

18 A. No. I said a lot of the content was review, not all of
19 it.

20 Q. So in anatomy you weren't close to failing. Is that what
21 you're saying?

22 A. I did not fail that exam, no.

23 Q. You did pretty well on that exam.

24 A. Yeah.

25 Q. And isn't it true that on the exam that you took -- the

1 first exam you took which was before September 28th, that was
2 the highest score you got on any of your anatomy written exams
3 that semester; isn't that true?

4 A. Yes.

5 Q. And on your anatomy practical, you took an anatomy
6 practical before September 28 before you secured your own
7 interpreters and CART, correct?

8 A. Yes, if that's what the letter indicated.

9 Q. You received over an 88 percent on that; is that correct?

10 MS. VARGAS: Objection, your Honor, I don't know what
11 the relevance of this is. And to the extent the witness has
12 memory of this, I think he ought to be asked.

13 THE COURT: Well, as to relevance, overruled. It is
14 cross-examination. And the phrasing of the question is not
15 objectionable. The witness may answer if he recalls.

16 BY MR. MOORE:

17 Q. Do you recall getting over an 88 percent on your first
18 anatomy practical?

19 A. I don't recall what score I got.

20 Q. Somewhere in that range, right?

21 A. Again there was a lot of review and it was also different
22 parts of the body that -- the examination was on different
23 parts of the body than the other two examinations that
24 semester.

25 Q. But again in your deposition, even though you're saying

1 that it was a lot of review, that it was easy, in your
2 deposition you told me you were close to failing.

3 A. I was missing information that was given.

4 Q. And close to failing.

5 A. I was struggling with accessing the information.

6 Q. Do you consider 88 percent failing?

7 A. I consider that is not the performance I could have with
8 equal access.

9 Q. So you think if you would have had CART and interpreters,
10 your score would have been higher?

11 A. I don't know about that but I would have had equal
12 access.

13 Q. And, in fact, isn't it true that that first anatomy
14 practical that you took was before -- again before you got
15 CART and interpreters was much higher than the anatomy
16 practical you took on December 7th where you got a 69 percent?

17 A. The material was different.

18 Q. It's the material that was different.

19 A. Yes.

20 Q. All right. And on your anatomy MDQ, you took two of
21 those prior to getting CART and interpreters, correct?

22 A. If that's what the record shows.

23 Q. And did you get failing grades on those?

24 A. I don't recall.

25 Q. You don't recall? You wouldn't recall if you got failing

1 grades?

2 A. Not -- I had quite a few MDQs.

3 Q. If I said you got a 77 on your August 8 MDQ, do you think
4 that's about right?

5 A. Possibly.

6 Q. Okay. So high 80s in anatomy, 77 on the MDQs and that's
7 with guessing -- I believe you said you were guessing all the
8 time you were --

9 MS. VARGAS: Objection, your Honor, the witness
10 didn't testify he was guessing on anatomy labs, on anatomy
11 exams.

12 THE COURT: Please rephrase.

13 BY MR. MOORE:

14 Q. Did you testify on direct examination you were doing a
15 lot of guessing before you got CART and interpreters?

16 A. Yes, when I was speechreading.

17 Q. When you were speechreading and you didn't have CART, you
18 didn't have interpreters, you were doing a lot of guessing --

19 A. That's fine.

20 Q. And you still got high 80s on your exams.

21 A. Correct, because there was a lot of review and I was
22 asking classmates for notes, I was using the note services and
23 asking my friends to make transcripts of the podcasts.

24 Q. So the note service helped.

25 A. It helped prepare the documents because I had no other

1 access, right.

2 Q. You were just saying you were also getting access to the
3 note-takers and that helped -- that's another reason why you
4 got the high 80s.

5 A. I'm sorry, I'm not following that.

6 Q. Well, I asked you, you were doing a lot of guessing you
7 said, but then you said, well, I also had access to the
8 note-takers. Are you saying -- did you say that because that
9 was helpful and that helped you get in the high 80s?

10 A. The note service helped me fill in the gaps since I did
11 not have equal access in the classroom.

12 Q. Molecular and cell biology, was that a lot of review and
13 repeating information?

14 A. It was for the first part.

15 Q. You had a molecular and cell biology class in the past?

16 A. I had biochemistry.

17 Q. Biochemistry. But did you have molecular and cell
18 biology before?

19 A. I took biology. It was explicitly stated at the
20 beginning of the class it was a review of biology and
21 chemistry principles and later in the semester the material
22 will get much harder.

23 Q. So the fact that -- do you recall taking an exam on
24 September 14th for molecular and cell biology?

25 A. I recall I probably had an exam sometime.

1 Q. Do you recall you got an 81 percent on that?

2 A. I don't recall what I got.

3 Q. You think that's about right?

4 MS. VARGAS: The witness testified he doesn't recall.
5 Objection.

6 THE COURT: Overruled. He may respond.

7 A. That's probably about right.

8 BY MR. MOORE:

9 Q. What about MDQs, did you take any molecular and cell
10 biology MDQs?

11 A. I believe I would have.

12 Q. And that would have been before September 28th when you
13 secured interpreters and CART, correct?

14 A. Correct.

15 Q. And do you recall taking one on August 28th and getting a
16 78 percent?

17 A. If that's what the record shows.

18 Q. You recall taking one on September 25th and getting 79
19 percent?

20 A. If that's what the record shows.

21 Q. Those aren't failing grades, are they?

22 A. No.

23 Q. So at least with regard to your examinations and quizzes,
24 those don't reflect that you were failing, correct?

25 A. Right.

1 Q. Sir, we talked about the letters from Dr. Backous and
2 Stacey Watson earlier that you had submit on your behalf. Do
3 you recall those letters?

4 A. I know about those letters, yes.

5 Q. And in those letters, Dr. Backous and Stacey Watson said
6 that appropriate auxiliary aids would include FM system, CART
7 and interpreters, correct?

8 A. Correct.

9 Q. But Dr. Backous and Stacey Watson don't really know what
10 you need in class, correct?

11 A. Right.

12 Q. In fact, the only reason those accommodations were in
13 that letter is because you told them that's what you wanted,
14 right?

15 A. I told them that's what had been effective for me.

16 Q. Right. You said this is what's effective for me and they
17 put it in there, right?

18 A. I was suspect so.

19 Q. Okay. So I think you said that they wouldn't know what
20 my accommodations are because they don't manage my
21 accommodations, right?

22 A. That's right.

23 Q. So what you're telling this jury is the stuff that's in
24 those letters that I just mentioned is only in that letter
25 because you told them to, they wouldn't know independently.

1 A. The letter to the office of disabilities services, no.

2 Q. Right. So is that a yes?

3 A. Yes.

4 Q. So what you're telling this jury is that you told them to
5 put that in there; it wasn't their independent conclusion, and
6 only you know what provides effective communication.

7 A. That's correct. I am that person.

8 Q. I understand that. I understand that you think and no
9 one else would know, only you would know what's effective.

10 A. Correct.

11 Q. Now, wouldn't you agree with me if you told them to put
12 it in there and they didn't independently put it in there,
13 that that's not very reliable, is it?

14 A. I don't know if I believe that.

15 Q. You could have put that in your own letter, correct?

16 A. I'm sorry?

17 Q. I said you can put that in your own letter, correct?

18 A. I put what in my own letter?

19 Q. That you needed CART, interpreters, and an FM system.

20 A. Yes.

21 Q. And you just took that from your letter, and said, This
22 is what I've requested, Dr. Backous, Stacey Watson, this is
23 what I think I need, this is what needs to go in your letter.

24 A. And I said I let them know that's what had been effective
25 for me.

1 THE COURT: Mr. Moore, as I had mentioned to counsel
2 earlier today, we need to stop at 4:40.

3 So, we will need to take a break in this testimony. I
4 want to thank the jury for their time and attention so far
5 this week.

6 Don't come in on Monday. If you come in on Monday, the
7 courtroom will look very different. It will be filled with
8 different parties and different lawyers because I have
9 sentencings in criminal matters on Monday.

10 Do come on Tuesday morning before 9:00. In the meantime,
11 keep an open mind, do not discuss the case among yourselves or
12 with anyone else.

13 Enjoy your weekend with your family and your friends, but
14 talk about something other than the case. And then join us at
15 nine o'clock on Tuesday, and we will continue to hear the
16 evidence.

17 Thank you. And we are in recess.

18 (Jury out at 4:40 p.m.)

19 THE COURT: Is there --

20 MS. VARGAS: Could I have clarification whether
21 Mr. Moore is finished with his cross or whether he continues
22 on Tuesday?

23 MR. MOORE: I'll continue.

24 THE COURT: Thank you all very much. Have a good
25 weekend.

1 MR. MOORE: Thank you.

2 MS. BALUS: Thank you, your Honor.

3 MS. VARGAS: Thank you.

4

5 (Adjourned at 4:41 p.m.)

6

7

8

9 I certify that the foregoing is a correct transcript from
10 the record of proceedings in the above-entitled matter.

10

11 /s Brenda L. Fauber
12 Brenda L. Fauber, RDR, CRR

7-21-14
Date

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